

A bill for an act

relating to human services; making changes to licensing provisions, including data practices, disqualifications, and background study requirements; providing alternate supervision technology for adult foster care licensing; amending Minnesota Statutes 2008, sections 13.46, subdivisions 3, 4; 245A.03, subdivision 2; 245A.04, subdivisions 5, 7; 245A.05; 245A.06, subdivision 8; 245A.07, subdivisions 1, 3, 5; 245A.11, by adding a subdivision; 245A.1435; 245A.16, subdivision 1; 245A.50, subdivision 5; 245C.03, subdivision 4; 245C.04, subdivision 1; 245C.07; 245C.08; 245C.13, subdivision 2; 245C.14, subdivision 2; 245C.15, subdivisions 1, 2, 3, 4; 245C.22, subdivision 7; 245C.24, subdivisions 2, 3; 245C.25; 245C.27, subdivision 1; 245C.301; 256.045, subdivisions 3, 3b; 626.556, subdivisions 2, 10e, 10f; 626.557, subdivisions 9c, 12b; 626.5572, subdivision 13; repealing Minnesota Statutes 2008, section 245C.10, subdivision 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE 1

DATA PRACTICES

Section 1. Minnesota Statutes 2008, section 13.46, subdivision 3, is amended to read:

Subd. 3. **Investigative data.** (a) Data on persons, including data on vendors of services ~~and data on~~ licensees, and applicants, that is collected, maintained, used, or disseminated by the welfare system in an investigation, authorized by statute and relating to the enforcement of rules or law, is confidential data on individuals pursuant to section 13.02, subdivision 3, or protected nonpublic data not on individuals pursuant to section 13.02, subdivision 13, and shall not be disclosed except:

(1) pursuant to section 13.05;

(2) pursuant to statute or valid court order;

(3) to a party named in a civil or criminal proceeding, administrative or judicial, for preparation of defense; or

(4) to provide notices required or permitted by statute.

The data referred to in this subdivision shall be classified as public data upon its submission to an administrative law judge or court in an administrative or judicial proceeding. Inactive welfare investigative data shall be treated as provided in section 13.39, subdivision 3.

(b) Notwithstanding any other provision in law, the commissioner of human services shall provide all active and inactive investigative data, including the name of the reporter of alleged maltreatment under section 626.556 or 626.557, to the ombudsman for mental health and developmental disabilities upon the request of the ombudsman.

Sec. 2. Minnesota Statutes 2008, section 13.46, subdivision 4, is amended to read:

Subd. 4. **Licensing data.** (a) As used in this subdivision:

(1) "licensing data" means all data collected, maintained, used, or disseminated by the welfare system pertaining to persons licensed or registered or who apply for licensure or registration or who formerly were licensed or registered under the authority of the commissioner of human services;

(2) "client" means a person who is receiving services from a licensee or from an applicant for licensure; and

(3) "personal and personal financial data" means Social Security numbers, identity of and letters of reference, insurance information, reports from the Bureau of Criminal Apprehension, health examination reports, and social/home studies.

(b)(1) Except as provided in paragraph (c), the following data on applicants, license holders, and former licensees are public: name, address, telephone number of licensees, date of receipt of a completed application, dates of licensure, licensed capacity, type of client preferred, variances granted, record of training and education in child care and child development, type of dwelling, name and relationship of other family members, previous license history, class of license, the existence and status of complaints, and the number of serious injuries to or deaths of individuals in the licensed program as reported to the commissioner of human services, the local social services agency, or any other county welfare agency. For purposes of this clause, a serious injury is one that is treated by a physician. When a correction order ~~or, an order to forfeit a fine, an order of license suspension, an order of temporary immediate suspension, an order of license revocation, an order of license denial, or an order of conditional license~~ has been issued, ~~a license is suspended, immediately suspended, revoked, denied, or made conditional,~~ or a complaint is resolved, the following data on current and former licensees and applicants are public: the substance and investigative findings of the licensing or maltreatment complaint,

licensing violation, or substantiated maltreatment; the record of informal resolution of a licensing violation; orders of hearing; findings of fact; conclusions of law; specifications of the final correction order, fine, suspension, temporary immediate suspension, revocation, denial, or conditional license contained in the record of licensing action; whether a fine has been paid; and the status of any appeal of these actions. If a licensing sanction under section 245A.07, or a license denial under section 245A.05, is based on a determination that the license holder or applicant is responsible for maltreatment or is disqualified under chapter 245C, the identity of the license holder or applicant as the individual responsible for maltreatment or as the disqualified individual is public data at the time of the issuance of the licensing sanction or denial.

(2) Notwithstanding sections 626.556, subdivision 11, and 626.557, subdivision 12b, when any person subject to disqualification under section 245C.14 in connection with a license to provide family day care for children, child care center services, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home is a substantiated perpetrator of maltreatment, and the substantiated maltreatment is a reason for a licensing action, the identity of the substantiated perpetrator of maltreatment is public data. For purposes of this clause, a person is a substantiated perpetrator if the maltreatment determination has been upheld under section 256.045; 626.556, subdivision 10i; 626.557, subdivision 9d; or chapter 14, or if an individual or facility has not timely exercised appeal rights under these sections, except as provided under clause (1).

(3) For applicants who withdraw their application prior to licensure or denial of a license, the following data are public: the name of the applicant, the city and county in which the applicant was seeking licensure, the dates of the commissioner's receipt of the initial application and completed application, the type of license sought, and the date of withdrawal of the application.

(4) For applicants who are denied a license, the following data are public: the name and address of the applicant, the city and county in which the applicant was seeking licensure, the dates of the commissioner's receipt of the initial application and completed application, the type of license sought, the date of denial of the application, the nature of the basis for the denial, the record of informal resolution of a denial, orders of hearings, findings of fact, conclusions of law, specifications of the final order of denial, and the status of any appeal of the denial.

(5) The following data on persons subject to disqualification under section 245C.14 in connection with a license to provide family day care for children, child care center services, foster care for children in the provider's home, or foster care or day care services

for adults in the provider's home, are public: the nature of any disqualification set aside under section 245C.22, subdivisions 2 and 4, and the reasons for setting aside the disqualification; the nature of any disqualification for which a variance was granted under sections 245A.04, subdivision 9; and 245C.30, and the reasons for granting any variance under section 245A.04, subdivision 9; and, if applicable, the disclosure that any person subject to a background study under section 245C.03, subdivision 1, has successfully passed a background study. If a licensing sanction under section 245A.07, or a license denial under section 245A.05, is based on a determination that an individual subject to disqualification under chapter 245C is disqualified, the disqualification as a basis for the licensing sanction or denial is public data. As specified in clause (1), if the disqualified individual is the license holder or applicant, the identity of the license holder or applicant is public data. If the disqualified individual is an individual other than the license holder or applicant, the identity of the disqualified individual shall remain private data.

(6) When maltreatment is substantiated under section 626.556 or 626.557 and the victim and the substantiated perpetrator are affiliated with a program licensed under chapter 245A, the commissioner of human services, local social services agency, or county welfare agency may inform the license holder where the maltreatment occurred of the identity of the substantiated perpetrator and the victim.

(7) Notwithstanding clause (1), for child foster care, only the name of the license holder and the status of the license are public if the county attorney has requested that data otherwise classified as public data under clause (1) be considered private data based on the best interests of a child in placement in a licensed program.

(c) The following are private data on individuals under section 13.02, subdivision 12, or nonpublic data under section 13.02, subdivision 9: personal and personal financial data on family day care program and family foster care program applicants and licensees and their family members who provide services under the license.

(d) The following are private data on individuals: the identity of persons who have made reports concerning licensees or applicants that appear in inactive investigative data, and the records of clients or employees of the licensee or applicant for licensure whose records are received by the licensing agency for purposes of review or in anticipation of a contested matter. The names of reporters of complaints or alleged violations of licensing standards under chapters 245A, 245B, 245C, and applicable rules and alleged maltreatment under sections 626.556 and 626.557, are confidential data and may be disclosed only as provided in section 626.556, subdivision 11, or 626.557, subdivision 12b.

(e) Data classified as private, confidential, nonpublic, or protected nonpublic under this subdivision become public data if submitted to a court or administrative law judge as

part of a disciplinary proceeding in which there is a public hearing concerning a license which has been suspended, immediately suspended, revoked, or denied.

(f) Data generated in the course of licensing investigations that relate to an alleged violation of ~~law~~ chapters 245A, 245B, 245C, and applicable rules, and sections 626.556 and 626.557, are investigative data under subdivision 3.

(g) Data that are not public data collected, maintained, used, or disseminated under this subdivision that relate to or are derived from a report as defined in section 626.556, subdivision 2, or 626.5572, subdivision 18, are subject to the destruction provisions of sections 626.556, subdivision 11c, and 626.557, subdivision 12b.

(h) Upon request, not public data collected, maintained, used, or disseminated under this subdivision that relate to or are derived from a report of substantiated maltreatment as defined in section 626.556 or 626.557 may be exchanged with the Department of Health for purposes of completing background studies pursuant to section 144.057 and with the Department of Corrections for purposes of completing background studies pursuant to section 241.021.

(i) Data on individuals collected according to licensing activities under chapters 245A and 245C, and data on individuals collected by the commissioner of human services according to maltreatment investigations under sections 626.556 and 626.557, may be shared with the Department of Human Rights, the Department of Health, the Department of Corrections, the ombudsman for mental health and developmental disabilities, and the individual's professional regulatory board when there is reason to believe that laws or standards under the jurisdiction of those agencies may have been violated. Unless otherwise specified in this chapter, the identity of a reporter of alleged maltreatment or licensing violations may not be disclosed.

(j) In addition to the notice of determinations required under section 626.556, subdivision 10f, if the commissioner or the local social services agency has determined that an individual is a substantiated perpetrator of maltreatment of a child based on sexual abuse, as defined in section 626.556, subdivision 2, and the commissioner or local social services agency knows that the individual is a person responsible for a child's care in another facility, the commissioner or local social services agency shall notify the head of that facility of this determination. The notification must include an explanation of the individual's available appeal rights and the status of any appeal. If a notice is given under this paragraph, the government entity making the notification shall provide a copy of the notice to the individual who is the subject of the notice.

(k) All not public data collected, maintained, used, or disseminated under this subdivision and subdivision 3 may be exchanged between the Department of Human

Services, Licensing Division, and the Department of Corrections for purposes of regulating services for which the Department of Human Services and the Department of Corrections have regulatory authority.

ARTICLE 2 LICENSING

Section 1. Minnesota Statutes 2008, section 245A.03, subdivision 2, is amended to read:

Subd. 2. **Exclusion from licensure.** (a) This chapter does not apply to:

(1) residential or nonresidential programs that are provided to a person by an individual who is related unless the residential program is a child foster care placement made by a local social services agency or a licensed child-placing agency, except as provided in subdivision 2a;

(2) nonresidential programs that are provided by an unrelated individual to persons from a single related family;

(3) residential or nonresidential programs that are provided to adults who do not abuse chemicals or who do not have a chemical dependency, a mental illness, a developmental disability, a functional impairment, or a physical disability;

(4) sheltered workshops or work activity programs that are certified by the commissioner of economic security;

(5) programs operated by a public school for children 33 months or older;

(6) nonresidential programs primarily for children that provide care or supervision for periods of less than three hours a day while the child's parent or legal guardian is in the same building as the nonresidential program or present within another building that is directly contiguous to the building in which the nonresidential program is located;

(7) nursing homes or hospitals licensed by the commissioner of health except as specified under section 245A.02;

(8) board and lodge facilities licensed by the commissioner of health that provide services for five or more persons whose primary diagnosis is mental illness that do not provide intensive residential treatment;

(9) homes providing programs for persons placed by a county or a licensed agency for legal adoption, unless the adoption is not completed within two years;

(10) programs licensed by the commissioner of corrections;

(11) recreation programs for children or adults that are operated or approved by a park and recreation board whose primary purpose is to provide social and recreational activities;

(12) programs operated by a school as defined in section 120A.22, subdivision 4, YMCA as defined in section 345.44, YWCA as defined in section 345.44, or JCC as defined in section 315.51, whose primary purpose is to provide child care to school-age children;

(13) Head Start nonresidential programs which operate for less than 45 days in each calendar year;

(14) noncertified boarding care homes unless they provide services for five or more persons whose primary diagnosis is mental illness or a developmental disability;

(15) programs for children such as scouting, boys clubs, girls clubs, and sports and art programs, and nonresidential programs for children provided for a cumulative total of less than 30 days in any 12-month period;

(16) residential programs for persons with mental illness, that are located in hospitals;

(17) the religious instruction of school-age children; Sabbath or Sunday schools; or the congregate care of children by a church, congregation, or religious society during the period used by the church, congregation, or religious society for its regular worship;

(18) camps licensed by the commissioner of health under Minnesota Rules, chapter 4630;

(19) mental health outpatient services for adults with mental illness or children with emotional disturbance;

(20) residential programs serving school-age children whose sole purpose is cultural or educational exchange, until the commissioner adopts appropriate rules;

(21) unrelated individuals who provide out-of-home respite care services to persons with developmental disabilities from a single related family for no more than 90 days in a 12-month period and the respite care services are for the temporary relief of the person's family or legal representative;

(22) respite care services provided as a home and community-based service to a person with a developmental disability, in the person's primary residence;

(23) community support services programs as defined in section 245.462, subdivision 6, and family community support services as defined in section 245.4871, subdivision 17;

(24) the placement of a child by a birth parent or legal guardian in a preadoptive home for purposes of adoption as authorized by section 259.47;

(25) settings registered under chapter 144D which provide home care services licensed by the commissioner of health to fewer than seven adults; ~~or~~

(26) chemical dependency or substance abuse treatment activities of licensed professionals in private practice as defined in Minnesota Rules, part 9530.6405, subpart

15, when the treatment activities are not paid for by the consolidated chemical dependency treatment fund; or

(27) consumer-directed community support service funded under the Medicaid waiver for persons with developmental disabilities when the individual who provided the service is:

(i) the same individual who is the direct payee of these specific waiver funds or paid by a fiscal agent, fiscal intermediary, or employer of record; and

(ii) not otherwise under the control of a residential or nonresidential program that is required to be licensed under this chapter when providing the service.

(b) For purposes of paragraph (a), clause (6), a building is directly contiguous to a building in which a nonresidential program is located if it shares a common wall with the building in which the nonresidential program is located or is attached to that building by skyway, tunnel, atrium, or common roof.

(c) Nothing in this chapter shall be construed to require licensure for any services provided and funded according to an approved federal waiver plan where licensure is specifically identified as not being a condition for the services and funding.

Sec. 2. Minnesota Statutes 2008, section 245A.04, subdivision 5, is amended to read:

Subd. 5. **Commissioner's right of access.** When the commissioner is exercising the powers conferred by this chapter and ~~section~~ sections 245.69, 626.556, and 626.557, the commissioner must be given access to the physical plant and grounds where the program is provided, documents and records, including records maintained in electronic format, persons served by the program, and staff whenever the program is in operation and the information is relevant to inspections or investigations conducted by the commissioner. The commissioner must be given access without prior notice and as often as the commissioner considers necessary if the commissioner is conducting an investigation of allegations of maltreatment or other violation of applicable laws or rules. In conducting inspections, the commissioner may request and shall receive assistance from other state, county, and municipal governmental agencies and departments. The applicant or license holder shall allow the commissioner to photocopy, photograph, and make audio and video tape recordings during the inspection of the program at the commissioner's expense. The commissioner shall obtain a court order or the consent of the subject of the records or the parents or legal guardian of the subject before photocopying hospital medical records.

Persons served by the program have the right to refuse to consent to be interviewed, photographed, or audio or videotaped. Failure or refusal of an applicant or license holder

9.1 to fully comply with this subdivision is reasonable cause for the commissioner to deny the
9.2 application or immediately suspend or revoke the license.

9.3 Sec. 3. Minnesota Statutes 2008, section 245A.04, subdivision 7, is amended to read:

9.4 Subd. 7. **Grant of license; license extension.** (a) If the commissioner determines
9.5 that the program complies with all applicable rules and laws, the commissioner shall issue
9.6 a license. At minimum, the license shall state:

9.7 (1) the name of the license holder;

9.8 (2) the address of the program;

9.9 (3) the effective date and expiration date of the license;

9.10 (4) the type of license;

9.11 (5) the maximum number and ages of persons that may receive services from the
9.12 program; and

9.13 (6) any special conditions of licensure.

9.14 (b) The commissioner may issue an initial license for a period not to exceed two
9.15 years if:

9.16 (1) the commissioner is unable to conduct the evaluation or observation required
9.17 by subdivision 4, paragraph (a), clauses (3) and (4), because the program is not yet
9.18 operational;

9.19 (2) certain records and documents are not available because persons are not yet
9.20 receiving services from the program; and

9.21 (3) the applicant complies with applicable laws and rules in all other respects.

9.22 (c) A decision by the commissioner to issue a license does not guarantee that any
9.23 person or persons will be placed or cared for in the licensed program. A license shall not
9.24 be transferable to another individual, corporation, partnership, voluntary association, other
9.25 organization, or controlling individual or to another location.

9.26 (d) A license holder must notify the commissioner and obtain the commissioner's
9.27 approval before making any changes that would alter the license information listed under
9.28 paragraph (a).

9.29 (e) The commissioner shall not issue or reissue a license if the applicant, license
9.30 holder, or controlling individual has:

9.31 (1) been disqualified and the disqualification was not set aside and no variance has
9.32 been granted;

9.33 (2) has been denied a license within the past two years; ~~or~~

9.34 (3) had a license revoked within the past five years; or

(4) has an outstanding debt related to a license fee, licensing fine, or settlement agreement for which payment is delinquent.

When a license is revoked under clause (1) or (3), the license holder and controlling individual may not hold any license under chapter 245A or 245B for five years following the revocation, and other licenses held by the applicant, license holder, or controlling individual shall also be revoked.

(f) The commissioner shall not issue a license if an individual living in the household where the licensed services will be provided as specified under section 245C.03, subdivision 1, has been disqualified and the disqualification has not been set aside and no variance has been granted.

(g) For purposes of reimbursement for meals only, under the Child and Adult Care Food Program, Code of Federal Regulations, title 7, subtitle B, chapter II, subchapter A, part 226, relocation within the same county by a licensed family day care provider, shall be considered an extension of the license for a period of no more than 30 calendar days or until the new license is issued, whichever occurs first, provided the county agency has determined the family day care provider meets licensure requirements at the new location.

(h) Unless otherwise specified by statute, all licenses expire at 12:01 a.m. on the day after the expiration date stated on the license. A license holder must apply for and be granted a new license to operate the program or the program must not be operated after the expiration date.

Sec. 4. Minnesota Statutes 2008, section 245A.05, is amended to read:

245A.05 DENIAL OF APPLICATION.

(a) The commissioner may deny a license if an applicant or controlling individual:

(1) fails to comply with applicable laws or rules, ~~or~~;

(2) knowingly withholds relevant information from or gives false or misleading information to the commissioner in connection with an application for a license or during an investigation;

(3) has a disqualification that has not been set aside under section 245C.22 and no variance has been granted;

(4) has an individual living in the household who received a background study under section 245C.03, subdivision 1, paragraph (a), clause (2), who has a disqualification that has not been set aside under section 245C.22, and no variance has been granted; or

(5) is associated with an individual who received a background study under section 245C.03, subdivision 1, paragraph (a), clause (6), who may have unsupervised access to

children or vulnerable adults, and who has a disqualification that has not been set aside under section 245C.22, and no variance has been granted.

(b) An applicant whose application has been denied by the commissioner must be given notice of the denial. Notice must be given by certified mail or personal service. The notice must state the reasons the application was denied and must inform the applicant of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The applicant may appeal the denial by notifying the commissioner in writing by certified mail or personal service ~~within 20 calendar days after receiving notice that the application was denied.~~ If mailed, the appeal must be postmarked and sent to the commissioner within 20 calendar days after the applicant received the notice of denial. If an appeal request is made by personal service, it must be received by the commissioner within 20 calendar days after the applicant received the notice of denial. Section 245A.08 applies to hearings held to appeal the commissioner's denial of an application.

Sec. 5. Minnesota Statutes 2008, section 245A.06, subdivision 8, is amended to read:

Subd. 8. **Requirement to post correction order.** (a) For licensed family child care providers and child care centers, upon receipt of any correction order or order of conditional license issued by the commissioner under this section, and notwithstanding a pending request for reconsideration of the correction order or order of conditional license by the license holder, the license holder shall post the correction order or order of conditional license in a place that is conspicuous to the people receiving services and all visitors to the facility for two years.

(b) Except as set forth under section 245C.301, paragraph (d), when the correction order or order of conditional license is accompanied by a maltreatment investigation memorandum prepared under section 626.556 or 626.557, the investigation memoranda must be posted with the correction order or order of conditional license.

Sec. 6. Minnesota Statutes 2008, section 245A.07, subdivision 1, is amended to read:

Subdivision 1. **Sanctions; appeals; license.** (a) In addition to making a license conditional under section 245A.06, the commissioner may ~~propose to~~ suspend or revoke the license, impose a fine, or secure an injunction against the continuing operation of the program of a license holder who does not comply with applicable law or rule. When applying sanctions authorized under this section, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.

12.1 (b) If a license holder appeals the suspension or revocation of a license and the
12.2 license holder continues to operate the program pending a final order on the appeal, and
12.3 the license expires during this time period, the commissioner shall issue the license holder
12.4 a temporary provisional license. The temporary provisional license is effective on the date
12.5 issued and expires on the date that a final order is issued. Unless otherwise specified by
12.6 the commissioner, variances in effect on the date of the license sanction under appeal
12.7 continue under the temporary provisional license. If a license holder fails to comply
12.8 with applicable law or rule while operating under a temporary provisional license, the
12.9 commissioner may impose sanctions under this section and section 245A.06, and may
12.10 terminate any prior variance. If the license holder prevails on the appeal and the effective
12.11 period of the previous license has expired, a new license shall be issued to the license
12.12 holder upon payment of any fee required under section 245A.10. The effective date of the
12.13 new license shall be retroactive to the date the license would have shown had no sanction
12.14 been initiated. The expiration date shall be the expiration date of that license had no
12.15 license sanction been initiated.

12.16 (c) If a license holder is under investigation and the license is due to expire
12.17 before completion of the investigation, the program shall be issued a new license upon
12.18 completion of the reapplication requirements. Upon completion of the investigation, a
12.19 licensing sanction may be imposed against the new license under this section, section
12.20 245A.06, or 245A.08.

12.21 (d) Failure to reapply or closure of a license by the license holder prior to the
12.22 completion of any investigation shall not preclude the commissioner from issuing a
12.23 licensing sanction under this section, section 245A.06, or 245A.08 at the conclusion
12.24 of the investigation.

12.25 Sec. 7. Minnesota Statutes 2008, section 245A.07, subdivision 3, is amended to read:

12.26 Subd. 3. **License suspension, revocation, or fine.** (a) The commissioner may
12.27 suspend or revoke a license, or impose a fine if a license holder fails to comply fully with
12.28 applicable laws or rules, if a license holder, a controlling individual, or an individual
12.29 living in the household where the licensed services are provided or is otherwise subject
12.30 to a background study has a disqualification which has not been set aside under section
12.31 245C.22, or if a license holder knowingly withholds relevant information from or gives
12.32 false or misleading information to the commissioner in connection with an application
12.33 for a license, in connection with the background study status of an individual, during an
12.34 investigation, or regarding compliance with applicable laws or rules. A license holder
12.35 who has had a license suspended, revoked, or has been ordered to pay a fine must be

13.1 given notice of the action by certified mail or personal service. If mailed, the notice
13.2 must be mailed to the address shown on the application or the last known address of the
13.3 license holder. The notice must state the reasons the license was suspended, revoked, or
13.4 a fine was ordered.

13.5 (b) If the license was suspended or revoked, the notice must inform the license
13.6 holder of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts
13.7 1400.8505 to 1400.8612. The license holder may appeal an order suspending or revoking
13.8 a license. The appeal of an order suspending or revoking a license must be made in writing
13.9 by certified mail or personal service. If mailed, the appeal must be postmarked and sent to
13.10 the commissioner within ten calendar days after the license holder receives notice that the
13.11 license has been suspended or revoked. If a request is made by personal service, it must be
13.12 received by the commissioner within ten calendar days after the license holder received
13.13 the order. Except as provided in subdivision 2a, paragraph (c), if a license holder submits
13.14 a timely appeal of an order suspending or revoking a license ~~shall stay the suspension or~~
13.15 ~~revocation,~~ the license holder may continue to operate until the commissioner issues a
13.16 final order on the suspension or revocation.

13.17 (c)(1) If the license holder was ordered to pay a fine, the notice must inform the
13.18 license holder of the responsibility for payment of fines and the right to a contested case
13.19 hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The appeal
13.20 of an order to pay a fine must be made in writing by certified mail or personal service. If
13.21 mailed, the appeal must be postmarked and sent to the commissioner within ten calendar
13.22 days after the license holder receives notice that the fine has been ordered. If a request is
13.23 made by personal service, it must be received by the commissioner within ten calendar
13.24 days after the license holder received the order.

13.25 (2) The license holder shall pay the fines assessed on or before the payment date
13.26 specified. If the license holder fails to fully comply with the order, the commissioner
13.27 may issue a second fine or suspend the license until the license holder complies. If the
13.28 license holder receives state funds, the state, county, or municipal agencies or departments
13.29 responsible for administering the funds shall withhold payments and recover any payments
13.30 made while the license is suspended for failure to pay a fine. A timely appeal shall stay
13.31 payment of the fine until the commissioner issues a final order.

13.32 (3) A license holder shall promptly notify the commissioner of human services,
13.33 in writing, when a violation specified in the order to forfeit a fine is corrected. If upon
13.34 reinspection the commissioner determines that a violation has not been corrected as
13.35 indicated by the order to forfeit a fine, the commissioner may issue a second fine. The
13.36 commissioner shall notify the license holder by certified mail or personal service that a

second fine has been assessed. The license holder may appeal the second fine as provided under this subdivision.

(4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for each determination of maltreatment of a child under section 626.556 or the maltreatment of a vulnerable adult under section 626.557 for which the license holder is determined responsible for the maltreatment under section 626.556, subdivision 10e, paragraph (i), or 626.557, subdivision 9c, paragraph (c); the license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff-to-child or adult ratios, and failure to ~~submit a~~ comply with background study requirements under chapter 245C; and the license holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those subject to a \$1,000 or \$200 fine above. For purposes of this section, "occurrence" means each violation identified in the commissioner's fine order. Fines assessed against a license holder that holds a license to provide the residential-based habilitation services, as defined under section 245B.02, subdivision 20, and a license to provide foster care, may be assessed against both licenses for the same occurrence, but the combined amount of the fines shall not exceed the amount specified in this clause for that occurrence.

(5) When a fine has been assessed, the license holder may not avoid payment by closing, selling, or otherwise transferring the licensed program to a third party. In such an event, the license holder will be personally liable for payment. In the case of a corporation, each controlling individual is personally and jointly liable for payment.

Sec. 8. Minnesota Statutes 2008, section 245A.07, subdivision 5, is amended to read:

Subd. 5. **Requirement to post licensing order or fine.** (a) For licensed family child care providers and child care centers, upon receipt of any order of license suspension, temporary immediate suspension, fine, or revocation issued by the commissioner under this section, and notwithstanding a pending appeal of the order of license suspension, temporary immediate suspension, fine, or revocation by the license holder, the license holder shall post the order of license suspension, temporary immediate suspension, fine, or revocation in a place that is conspicuous to the people receiving services and all visitors to the facility for two years.

(b) Except as set forth under section 245C.301, paragraph (d), when the order of license suspension, temporary immediate suspension, fine, or revocation is accompanied by a maltreatment investigation memorandum prepared under section 626.556 or 626.557,

15.1 the investigation memoranda must be posted with the order of license suspension,
15.2 temporary immediate suspension, fine, or revocation.

15.3 Sec. 9. Minnesota Statutes 2008, section 245A.11, is amended by adding a subdivision
15.4 to read:

15.5 Subd. 7a. **Alternate overnight supervision technology; adult foster care license.**

15.6 (a) The commissioner may grant an applicant or license holder an adult foster care license
15.7 for a residence that does not have a caregiver in the residence during normal sleeping
15.8 hours as required under Minnesota Rules, part 9555.5105, subpart 37, item B, but uses
15.9 monitoring technology to alert the license holder when an incident occurs that may
15.10 jeopardize the health, safety, or rights of a foster care recipient. The applicant or license
15.11 holder must comply with all other requirements under Minnesota Rules, parts 9555.5105
15.12 to 9555.6265, and the requirements under this subdivision. The license printed by the
15.13 commissioner must state in bold and large font:

15.14 (1) that staff are not present on-site overnight; and

15.15 (2) the telephone number of the county's common entry point for making reports of
15.16 suspected maltreatment of vulnerable adults under section 626.557, subdivision 9.

15.17 (b) Applications for a license under this section must be submitted directly to
15.18 the Department of Human Services licensing division. The licensing division must
15.19 immediately notify the host county and lead county contract agency and the host county
15.20 licensing agency. The licensing division must collaborate with the county licensing
15.21 agency in the review of the application and the licensing of the program.

15.22 (c) Before a license is issued by the commissioner, and for the duration of the
15.23 license, the applicant or license holder must establish, maintain, and document the
15.24 implementation of written policies and procedures addressing the requirements in
15.25 paragraphs (c) through (f).

15.26 (d) The applicant or license holder must have policies and procedures that:

15.27 (1) establish characteristics of target populations that will be admitted into the home,
15.28 and characteristics of populations that will not be accepted into the home;

15.29 (2) explain the discharge process when a foster care recipient requires overnight
15.30 supervision or other services that cannot be provided by the license holder due to the
15.31 limited hours that the license holder is on-site;

15.32 (3) describe the types of events to which the program will respond with a physical
15.33 presence when those events occur in the home during time when staff are not on-site, and
15.34 how the license holder's response plan meets the requirements in clause (1) or (2);

(4) establish a process for documenting a review of the implementation and effectiveness of the response protocol for the response required under clause (1) or (2).

The documentation must include:

- (i) a description of the triggering incident;
- (ii) the date and time of the triggering incident;
- (iii) the time of the response or responses under clause (1) or (2);
- (iv) whether the response met the resident's needs;
- (v) whether the existing policies and response protocols were followed; and
- (vi) whether the existing policies and protocols are adequate or need modification.

When no physical presence response is completed for a three-month period, the license holder's written policies and procedures must require a physical presence response drill to be conducted for which the effectiveness of the response protocol under clause (1) or (2) will be reviewed and documented as required under this clause; and

(5) establish that emergency and nonemergency phone numbers are posted in a prominent location in a common area of the home where they can be easily observed by a person responding to an incident who is not otherwise affiliated with the home.

(e) The license holder must document and include in the license application which response alternative under clause (1) or (2) is in place for responding to situations that present a serious risk to the health, safety, or rights of people receiving foster care services in the home:

(1) response alternative (1) requires only the technology to provide an electronic notification or alert to the license holder that an event is underway that requires a response. Under this alternative, no more than ten minutes will pass before the license holder will be physically present on-site to respond to the situation; or

(2) response alternative (2) requires the electronic notification and alert system under alternative (1), but more than ten minutes may pass before the license holder is present on-site to respond to the situation. Under alternative (2), all of the following conditions are met:

(i) the license holder has a written description of the interactive technological applications that will assist the license holder in communicating with and assessing the needs related to care, health, and safety of the foster care recipients. This interactive technology must permit the license holder to remotely assess the well being of the foster care recipient without requiring the initiation or participation by the foster care recipient. Requiring the foster care recipient to initiate a telephone call or answer a telephone call does not meet this requirement;

(ii) the license holder documents how the remote license holder is qualified and capable of meeting the needs of the foster care recipients and assessing foster care recipients' needs during the absence of the license holder on site;

(iii) the license holder maintains written procedures to dispatch emergency response personnel to the site in the event of an identified emergency; and

(iv) each foster care recipient's individualized plan of care, individual service plan under section 256B.092, subdivision 1b, if required, or individual resident placement agreement under Minnesota Rules, part 9555.5105, subpart 19, if required, identifies the maximum response time, which may be greater than ten minutes, for the license holder to be on-site for that foster care recipient.

(f) All placement agreements, individual service agreements, and plans applicable to the foster care recipient must clearly state that the adult foster care license category is a program without the presence of a caregiver in the residence during normal sleeping hours; the protocols in place for responding to situations that present a serious risk to health, safety, or rights of foster care recipients under paragraph (d), clause (1) or (2); and a signed informed consent from each foster care recipient or the person's legal representative documenting the person's or legal representative's agreement with placement in the program. If electronic monitoring technology is used in the home, the informed consent form must also explain the following:

(1) how any electronic monitoring is incorporated into the alternative supervision system;

(2) the backup system for any electronic monitoring in times of electrical outages or other equipment malfunctions;

(3) how the license holder is trained on the use of the technology;

(4) the event types and license holder response times established under paragraph (d);

(5) how the license holder protects the foster care recipient's privacy related to electronic monitoring and related to any electronically recorded data generated by the monitoring system. The consent form must explain where and how the electronically recorded data is stored, with whom it will be shared, and how long it is retained; and

(6) the risks and benefits of the alternative overnight supervision system.

The written explanations under clauses (1) to (6) may be accomplished through cross-references to other policies and procedures as long as they are explained to the person giving consent, and the person giving consent is offered a copy.

(g) Nothing in this section requires the applicant or license holder to develop or maintain separate or duplicative policies, procedures, documentation, consent forms, or

individual plans that may be required for other licensing standards, if the requirements of this section are incorporated into those documents.

(h) The commissioner may grant variances to the requirements of this section according to section 245A.04, subdivision 9.

(i) For the purposes of paragraphs (b) through (h), license holder has the meaning given under section 245A.02, subdivision 9, and additionally includes all staff, volunteers, and contractors affiliated with the license holder.

Sec. 10. Minnesota Statutes 2008, section 245A.1435, is amended to read:

245A.1435 REDUCTION OF RISK OF SUDDEN INFANT DEATH SYNDROME IN LICENSED PROGRAMS.

(a) When a license holder is placing an infant to sleep, the license holder must place the infant on the infant's back, unless the license holder has documentation from the infant's parent directing an alternative sleeping position for the infant, and. The parent directive must be on a form approved by the commissioner and must include a statement that the parent or legal guardian has read the information provided by the Minnesota Sudden Infant Death Center, related to the risk of SIDS and the importance of placing an infant or child on the back to sleep to reduce the risk of SIDS.

(b) The license holder must place the infant in a crib with directly on a firm mattress with a fitted crib sheet that fits tightly on the mattress and overlaps the mattress so it cannot be dislodged by pulling on the corner of the sheet. The license holder must not place pillows, quilts, comforters, sheepskin, pillow-like stuffed toys, or other soft products in the crib with the infant. The requirements of this section apply to license holders serving infants up to and including 12 months of age. Licensed child care providers must meet the crib requirements under section 245A.146.

Sec. 11. Minnesota Statutes 2008, section 245A.16, subdivision 1, is amended to read:

Subdivision 1. **Delegation of authority to agencies.** (a) County agencies and private agencies that have been designated or licensed by the commissioner to perform licensing functions and activities under section 245A.04 background studies for adult foster care, family adult day services, and family child care, under chapter 245C; to recommend denial of applicants under section 245A.05; to issue correction orders, to issue variances, and recommend a conditional license under section 245A.06, or to recommend suspending or revoking a license or issuing a fine under section 245A.07, shall comply with rules and directives of the commissioner governing those functions and with this

section. The following variances are excluded from the delegation of variance authority and may be issued only by the commissioner:

(1) dual licensure of family child care and child foster care, dual licensure of child and adult foster care, and adult foster care and family child care;

(2) adult foster care maximum capacity;

(3) adult foster care minimum age requirement;

(4) child foster care maximum age requirement;

(5) variances regarding disqualified individuals except that county agencies may issue variances under section 245C.30 regarding disqualified individuals when the county is responsible for conducting a consolidated reconsideration according to sections 245C.25 and 245C.27, subdivision 2, clauses (a) and (b), of a county maltreatment determination and a disqualification based on serious or recurring maltreatment; and

(6) the required presence of a caregiver in the adult foster care residence during normal sleeping hours.

Except as provided in section 245A.14, subdivision 4, paragraph (e), a county agency must not grant a license holder a variance to exceed the maximum allowable family child care license capacity of 14 children.

(b) County agencies must report information about disqualification reconsiderations under sections 245C.25 and 245C.27, subdivision 2, paragraphs (a) and (b), and variances granted under paragraph (a), clause (5), to the commissioner at least monthly in a format prescribed by the commissioner.

(c) For family day care programs, the commissioner may authorize licensing reviews every two years after a licensee has had at least one annual review.

(d) For family adult day services programs, the commissioner may authorize licensing reviews every two years after a licensee has had at least one annual review.

(e) A license issued under this section may be issued for up to two years.

Sec. 12. Minnesota Statutes 2008, section 245A.50, subdivision 5, is amended to read:

Subd. 5. Sudden infant death syndrome and shaken baby syndrome training.

(a) License holders must document that before staff persons, caregivers, and helpers assist in the care of infants, they are instructed on the standards in section 245A.1435 and receive training on reducing the risk of sudden infant death syndrome and shaken baby syndrome. The training in this subdivision may be provided as initial training under subdivision 1 or ongoing training under subdivision 7.

(b) Training required under this subdivision must be at least one hour in length and must be completed at least once every five years. At a minimum, the training must address

the risk factors related to sudden infant death syndrome and shaken baby syndrome, means of reducing the risk of sudden infant death syndrome and shaken baby syndrome in child care, and license holder communication with parents regarding reducing the risk of sudden infant death syndrome and shaken baby syndrome.

(c) Training for family and group family child care providers must be approved by the county licensing agency.

(d) The commissioner shall make available for viewing by all licensed child care providers a video presentation on the dangers associated with shaking infants and young children. The video presentation shall be part of the initial and ongoing annual training of licensed child care providers. The commissioner shall provide to child care providers and interested individuals, at cost, copies of a video approved by the commissioner of health under section 144.574 on the dangers associated with shaking infants and young children.

Sec. 13. Minnesota Statutes 2008, section 245C.04, subdivision 1, is amended to read:

Subdivision 1. **Licensed programs.** (a) The commissioner shall conduct a background study of an individual required to be studied under section 245C.03, subdivision 1, at least upon application for initial license for all license types.

(b) The commissioner shall conduct a background study of an individual required to be studied under section 245C.03, subdivision 1, at reapplication for a license for adult foster care, family adult day services, and family child care.

(c) The commissioner is not required to conduct a study of an individual at the time of reapplication for a license if the individual's background study was completed by the commissioner of human services for an adult foster care license holder that is also:

(1) registered under chapter 144D; or

(2) licensed to provide home and community-based services to people with disabilities at the foster care location and the license holder does not reside in the foster care residence; and

(3) the following conditions are met:

(i) a study of the individual was conducted either at the time of initial licensure or when the individual became affiliated with the license holder;

(ii) the individual has been continuously affiliated with the license holder since the last study was conducted; and

(iii) the last study of the individual was conducted on or after October 1, 1995.

(d) From July 1, 2007, to June 30, 2009, the commissioner of human services shall conduct a study of an individual required to be studied under section 245C.03, at the time of reapplication for a child foster care license. The county or private agency shall

collect and forward to the commissioner the information required under section 245C.05, subdivisions 1, paragraphs (a) and (b), and 5, paragraphs (a) and (b). The background study conducted by the commissioner of human services under this paragraph must include a review of the information required under section 245C.08, subdivisions 1, paragraph (a), clauses (1) to (5), 3, and 4.

(e) The commissioner of human services shall conduct a background study of an individual specified under section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6), who is newly affiliated with a child foster care license holder. The county or private agency shall collect and forward to the commissioner the information required under section 245C.05, subdivisions 1 and 5. The background study conducted by the commissioner of human services under this paragraph must include a review of the information required under section 245C.08, subdivisions 1, 3, and 4.

(f) Applicants for licensure, license holders, and other entities as provided in this chapter must submit completed background study forms to the commissioner before individuals specified in section 245C.03, subdivision 1, begin positions allowing direct contact in any licensed program.

(g) For purposes of this section, a physician licensed under chapter 147 is considered to be continuously affiliated upon the license holder's receipt from the commissioner of health or human services of the physician's background study results.

(h) A license holder must provide the commissioner notice through the commissioner's online background study system or through a letter mailed to the commissioner when:

(1) an individual returns to a position requiring a background study following an absence of 45 or more consecutive days; or

(2) a program that discontinued providing licensed direct contact services for 45 or more consecutive days begins to provide direct contact licensed services again.

The license holder shall maintain a copy of the notification provided to the commissioner under this paragraph in the program's files.

Sec. 14. Minnesota Statutes 2008, section 245C.07, is amended to read:

245C.07 STUDY SUBJECT AFFILIATED WITH MULTIPLE FACILITIES.

(a) When a license holder, applicant, or other entity owns multiple programs or services that are licensed by the Department of Human Services, Department of Health, or Department of Corrections, only one background study is required for an individual who provides direct contact services in one or more of the licensed programs or services if:

22.1 (1) the license holder designates one individual with one address and telephone
22.2 number as the person to receive sensitive background study information for the multiple
22.3 licensed programs or services that depend on the same background study; and

22.4 (2) the individual designated to receive the sensitive background study information
22.5 is capable of determining, upon request of the department, whether a background study
22.6 subject is providing direct contact services in one or more of the license holder's programs
22.7 or services and, if so, at which location or locations.

22.8 (b) When a license holder maintains background study compliance for multiple
22.9 licensed programs according to paragraph (a), and one or more of the licensed programs
22.10 closes, the license holder shall immediately notify the commissioner which staff will be
22.11 transferred to an active license so that the background studies can be electronically paired
22.12 with the license holder's active program.

22.13 ~~(b)~~ (c) When a background study is being initiated by a licensed program or service
22.14 or a foster care provider that is also registered under chapter 144D, a study subject
22.15 affiliated with multiple licensed programs or services may attach to the background study
22.16 form a cover letter indicating the additional names of the programs or services, addresses,
22.17 and background study identification numbers.

22.18 When the commissioner receives a notice, the commissioner shall notify each
22.19 program or service identified by the background study subject of the study results.

22.20 The background study notice the commissioner sends to the subsequent agencies
22.21 shall satisfy those programs' or services' responsibilities for initiating a background study
22.22 on that individual.

22.23 Sec. 15. Minnesota Statutes 2008, section 245C.08, is amended to read:

22.24 **245C.08 BACKGROUND STUDY; COMMISSIONER REVIEWS.**

22.25 Subdivision 1. **Background studies conducted by ~~commissioner~~ Department of**
22.26 **Human Services.** (a) For a background study conducted by the ~~commissioner~~ Department
22.27 of Human Services, the commissioner shall review:

22.28 (1) information related to names of substantiated perpetrators of maltreatment of
22.29 vulnerable adults that has been received by the commissioner as required under section
22.30 626.557, subdivision 9c, paragraph (i);

22.31 (2) the commissioner's records relating to the maltreatment of minors in licensed
22.32 programs, and from findings of maltreatment of minors as indicated through the social
22.33 service information system;

22.34 (3) information from juvenile courts as required in subdivision 4 for individuals listed
22.35 in section 245C.03, subdivision 1, ~~clauses (2), (5), and (6)~~ when there is reasonable cause;

23.1 (4) information from the Bureau of Criminal Apprehension;

23.2 (5) except as provided in clause (6), information from the national crime information

23.3 system when the commissioner has reasonable cause as defined under section 245C.05,

23.4 subdivision 5; and

23.5 (6) for a background study related to a child foster care application for licensure or

23.6 adoptions, the commissioner shall also review:

23.7 (i) information from the child abuse and neglect registry for any state in which the

23.8 background study subject has resided for the past five years; and

23.9 (ii) information from national crime information databases, when the background

23.10 study ~~object~~ subject is 18 years of age or older.

23.11 (b) Notwithstanding expungement by a court, the commissioner may consider

23.12 information obtained under paragraph (a), clauses (3) and (4), unless the commissioner

23.13 received notice of the petition for expungement and the court order for expungement is

23.14 directed specifically to the commissioner.

23.15 Subd. 2. **Background studies conducted by a county agency.** (a) For a background

23.16 study conducted by a county agency for adult foster care, family adult day services, and

23.17 family child care services, the commissioner shall review:

23.18 (1) information from the county agency's record of substantiated maltreatment

23.19 of adults and the maltreatment of minors;

23.20 (2) information from juvenile courts as required in subdivision 4 for ~~individuals~~

23.21 ~~listed in section 245C.03, subdivision 1, clauses (2), (5), and (6);~~

23.22 (i) individuals listed in section 245C.03, subdivision 1, who are ages 13 through 23

23.23 living in the household where the licensed services will be provided; and

23.24 (ii) any other individual listed under section 245C.03, subdivision 1, when there

23.25 is reasonable cause; and

23.26 (3) information from the Bureau of Criminal Apprehension.

23.27 (b) If the individual has resided in the county for less than five years, the study shall

23.28 include the records specified under paragraph (a) for the previous county or counties of

23.29 residence for the past five years.

23.30 (c) Notwithstanding expungement by a court, the county agency may consider

23.31 information obtained under paragraph (a), clause (3), unless the commissioner received

23.32 notice of the petition for expungement and the court order for expungement is directed

23.33 specifically to the commissioner.

23.34 Subd. 3. **Arrest and investigative information.** (a) For any background study

23.35 completed under this section, if the commissioner has reasonable cause to believe the

24.1 information is pertinent to the disqualification of an individual, the commissioner also
24.2 may review arrest and investigative information from:

- 24.3 (1) the Bureau of Criminal Apprehension;
- 24.4 (2) the commissioner of health;
- 24.5 (3) a county attorney;
- 24.6 (4) a county sheriff;
- 24.7 (5) a county agency;
- 24.8 (6) a local chief of police;
- 24.9 (7) other states;
- 24.10 (8) the courts;
- 24.11 (9) the Federal Bureau of Investigation;
- 24.12 (10) the National Criminal Records Repository; and
- 24.13 (11) criminal records from other states.

24.14 (b) The commissioner is not required to conduct more than one review of a subject's
24.15 records from the Federal Bureau of Investigation if a review of the subject's criminal
24.16 history with the Federal Bureau of Investigation has already been completed by the
24.17 commissioner and there has been no break in the subject's affiliation with the license
24.18 holder who initiated the background study.

24.19 Subd. 4. **Juvenile court records.** (a) For a background study conducted by the
24.20 Department of Human Services, the commissioner shall review records from the juvenile
24.21 courts for an individual studied under section 245C.03, subdivision 1, ~~clauses (2) and (5)~~
24.22 when the commissioner has reasonable cause.

24.23 (b) ~~For individuals studied under section 245C.03, subdivision 1, clauses (1), (3),~~
24.24 ~~(4), and (6), and subdivision 2, who are ages 13 to 17, the commissioner shall review~~
24.25 ~~records from the juvenile courts~~ a background study conducted by a county agency, the
24.26 commissioner shall review records from the juvenile courts for individuals listed in section
24.27 245C.03, subdivision 1, who are ages 13 through 23 living in the household where the
24.28 licensed services will be provided. The commissioner shall also review records from
24.29 juvenile courts for any other individual listed under section 245C.03, subdivision 1, when
24.30 the commissioner has reasonable cause.

24.31 (c) The juvenile courts shall help with the study by giving the commissioner existing
24.32 juvenile court records relating to delinquency proceedings held on individuals described
24.33 in section 245C.03, subdivision 1, ~~clauses (2), (5), and (6), relating to delinquency~~
24.34 ~~proceedings held within either the five years immediately preceding the background study~~
24.35 ~~or the five years immediately preceding the individual's 18th birthday, whichever time~~
24.36 ~~period is longer~~ when requested pursuant to this subdivision.

(d) For purposes of this chapter, a finding that a delinquency petition is proven in juvenile court shall be considered a conviction in state district court.

(e) Juvenile courts shall provide orders of involuntary and voluntary termination of parental rights under section 260C.301 to the commissioner upon request for purposes of conducting a background study under this chapter.

Sec. 16. Minnesota Statutes 2008, section 245C.13, subdivision 2, is amended to read:

Subd. 2. **Direct contact pending completion of background study.** The subject of a background study may not perform any activity requiring a background study under paragraph (b) until the commissioner has issued one of the notices under paragraph (a).

(a) Notices from the commissioner required prior to activity under paragraph (b) include:

(1) a notice of the study results under section 245C.17 stating that:

(i) the individual is not disqualified; or

(ii) more time is needed to complete the study but the individual is not required to be removed from direct contact or access to people receiving services prior to completion of the study as provided under section 245C.17, subdivision 1, paragraph (b) or (c). The notice that more time is needed to complete the study must also indicate whether the individual is required to be under continuous direct supervision prior to completion of the background study;

(2) a notice that a disqualification has been set aside under section 245C.23; or

(3) a notice that a variance has been granted related to the individual under section 245C.30.

(b) Activities prohibited prior to receipt of notice under paragraph (a) include:

(1) being issued a license;

(2) living in the household where the licensed program will be provided;

(3) providing direct contact services to persons served by a program unless the subject is under continuous direct supervision; or

(4) having access to persons receiving services if the background study was completed under section 144.057, subdivision 1, or 245C.03, subdivision 1, paragraph (a), clause (2), (5), or (6), unless the subject is under continuous direct supervision.

Sec. 17. Minnesota Statutes 2008, section 245C.15, subdivision 1, is amended to read:

Subdivision 1. **Permanent disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) regardless of how much time has passed since the discharge of the sentence imposed, if any, for the offense; and (2) unless otherwise specified, regardless

of the level of the offense, the individual has committed any of the following offenses: sections 243.166 (violation of predatory offender registration law); 609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); a felony offense under 609.221 or 609.222 (assault in the first or second degree); a felony offense under sections 609.2242 and 609.2243 (domestic assault), spousal abuse, child abuse or neglect, or a crime against children; 609.2247 (domestic assault by strangulation); 609.228 (great bodily harm caused by distribution of drugs); 609.245 (aggravated robbery); 609.25 (kidnapping); 609.2661 (murder of an unborn child in the first degree); 609.2662 (murder of an unborn child in the second degree); 609.2663 (murder of an unborn child in the third degree); 609.322 (solicitation, inducement, and promotion of prostitution); 609.324, subdivision 1 (other prohibited acts); 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.3451 (criminal sexual conduct in the fifth degree); 609.3453 (criminal sexual predatory conduct); 609.352 (solicitation of children to engage in sexual conduct); 609.365 (incest); a felony offense under 609.377 (malicious punishment of a child); a felony offense under 609.378 (neglect or endangerment of a child); 609.561 (arson in the first degree); 609.66, subdivision 1e (drive-by shooting); 609.749, subdivision 3, 4, or 5 (felony-level harassment; stalking); 609.855, subdivision 5 (shooting at or in a public transit vehicle or facility); 617.23, subdivision 2, clause (1), or subdivision 3, clause (1) (indecent exposure involving a minor); 617.246 (use of minors in sexual performance prohibited); or 617.247 (possession of pictorial representations of minors). An individual also is disqualified under section 245C.14 regardless of how much time has passed since the involuntary termination of the individual's parental rights under section 260C.301.

(b) An individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes, permanently disqualifies the individual under section 245C.14.

(c) An individual's offense in any other state or country, where the elements of the offense are substantially similar to any of the offenses listed in paragraph (a), permanently disqualifies the individual under section 245C.14.

(d) When a disqualification is based on a judicial determination other than a conviction, the disqualification period begins from the date of the court order. When a disqualification is based on an admission, the disqualification period begins from the date of an admission in court. When a disqualification is based on an Alford Plea, the disqualification period begins from the date the Alford Plea is entered in court. When

27.1 a disqualification is based on a preponderance of evidence of a disqualifying act, the
27.2 disqualification date begins from the date of the dismissal, the date of discharge of the
27.3 sentence imposed for a conviction for a disqualifying crime of similar elements, or the
27.4 date of the incident, whichever occurs last.

27.5 (e) If the individual studied commits one of the offenses listed in paragraph (a) that
27.6 is specified as a felony-level only offense, but the sentence or level of offense is a gross
27.7 misdemeanor or misdemeanor, the individual is disqualified, but the disqualification
27.8 look-back period for the offense is the period applicable to gross misdemeanor or
27.9 misdemeanor offenses.

27.10 Sec. 18. Minnesota Statutes 2008, section 245C.15, subdivision 2, is amended to read:

27.11 Subd. 2. **15-year disqualification.** (a) An individual is disqualified under section
27.12 245C.14 if: (1) less than 15 years have passed since the discharge of the sentence imposed,
27.13 if any, for the offense; and (2) the individual has committed a felony-level violation
27.14 of any of the following offenses: sections 256.98 (wrongfully obtaining assistance);
27.15 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph
27.16 (c) (federal Food Stamp Program fraud); 609.165 (felon ineligible to possess firearm);
27.17 609.21 (criminal vehicular homicide and injury); 609.215 (suicide); 609.223 or 609.2231
27.18 (assault in the third or fourth degree); repeat offenses under 609.224 (assault in the fifth
27.19 degree); 609.229 (crimes committed for benefit of a gang); 609.2325 (criminal abuse of a
27.20 vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.235 (use of
27.21 drugs to injure or facilitate crime); 609.24 (simple robbery); 609.255 (false imprisonment);
27.22 609.2664 (manslaughter of an unborn child in the first degree); 609.2665 (manslaughter
27.23 of an unborn child in the second degree); 609.267 (assault of an unborn child in the first
27.24 degree); 609.2671 (assault of an unborn child in the second degree); 609.268 (injury
27.25 or death of an unborn child in the commission of a crime); 609.27 (coercion); 609.275
27.26 (attempt to coerce); 609.466 (medical assistance fraud); 609.498, subdivision 1 or 1b
27.27 (aggravated first-degree or first-degree tampering with a witness); 609.52 (theft); 609.521
27.28 (possession of shoplifting gear); 609.525 (bringing stolen goods into Minnesota); 609.527
27.29 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored
27.30 checks); 609.562 (arson in the second degree); 609.563 (arson in the third degree);
27.31 609.582 (burglary); 609.59 (possession of burglary tools); 609.611 (insurance fraud);
27.32 609.625 (aggravated forgery); 609.63 (forgery); 609.631 (check forgery; offering a forged
27.33 check); 609.635 (obtaining signature by false pretense); 609.66 (dangerous weapons);
27.34 609.67 (machine guns and short-barreled shotguns); 609.687 (adulteration); 609.71
27.35 (riot); 609.713 (terroristic threats); 609.82 (fraud in obtaining credit); 609.821 (financial

transaction card fraud); 617.23 (indecent exposure), not involving a minor; repeat offenses under 617.241 (obscene materials and performances; distribution and exhibition prohibited; penalty); 624.713 (certain persons not to possess firearms); chapter 152 (drugs; controlled substance); or a felony-level conviction involving alcohol or drug use.

(b) An individual is disqualified under section 245C.14 if less than 15 years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes.

(c) For foster care and family child care an individual is disqualified under section 245C.14 if less than 15 years has passed since the individual's voluntary termination of the individual's parental rights under section 260C.301, subdivision 1, paragraph (b), or 260C.301, subdivision 3.

(d) An individual is disqualified under section 245C.14 if less than 15 years has passed since the discharge of the sentence imposed for an offense in any other state or country, the elements of which are substantially similar to the elements of the offenses listed in paragraph (a).

(e) If the individual studied commits one of the offenses listed in paragraph (a), but the sentence or level of offense is a gross misdemeanor or misdemeanor, the individual is disqualified but the disqualification look-back period for the offense is the period applicable to the gross misdemeanor or misdemeanor disposition.

(f) When a disqualification is based on a judicial determination other than a conviction, the disqualification period begins from the date of the court order. When a disqualification is based on an admission, the disqualification period begins from the date of an admission in court. When a disqualification is based on an Alford Plea, the disqualification period begins from the date the Alford Plea is entered in court. When a disqualification is based on a preponderance of evidence of a disqualifying act, the disqualification date begins from the date of the dismissal, the date of discharge of the sentence imposed for a conviction for a disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

Sec. 19. Minnesota Statutes 2008, section 245C.15, subdivision 3, is amended to read:

Subd. 3. Ten-year disqualification. (a) An individual is disqualified under section 245C.14 if: (1) less than ten years have passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a gross misdemeanor-level violation of any of the following offenses: sections 256.98 (wrongfully obtaining assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10,

paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide and injury); 609.221 or 609.222 (assault in the first or second degree); 609.223 or 609.2231 (assault in the third or fourth degree); 609.224 (assault in the fifth degree); 609.224, subdivision 2, paragraph (c) (assault in the fifth degree by a caregiver against a vulnerable adult); 609.2242 and 609.2243 (domestic assault); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse of a vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult); 609.265 (abduction); 609.275 (attempt to coerce); 609.324, subdivision 1a (other prohibited acts; minor engaged in prostitution); 609.33 (disorderly house); 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child); 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored checks); 609.582 (burglary); 609.59 (possession of burglary tools); 609.611 (insurance fraud); 609.631 (check forgery; offering a forged check); 609.66 (dangerous weapons); 609.71 (riot); 609.72, subdivision 3 (disorderly conduct against a vulnerable adult); repeat offenses under 609.746 (interference with privacy); 609.749, subdivision 2 (harassment; stalking); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23 (indecent exposure), not involving a minor; 617.241 (obscene materials and performances); 617.243 (indecent literature, distribution); 617.293 (harmful materials; dissemination and display to minors prohibited); or violation of an order for protection under section 518B.01, subdivision 14.

(b) An individual is disqualified under section 245C.14 if less than ten years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes.

(c) An individual is disqualified under section 245C.14 if less than ten years has passed since the discharge of the sentence imposed for an offense in any other state or country, the elements of which are substantially similar to the elements of any of the offenses listed in paragraph (a).

(d) If the individual studied commits one of the offenses listed in paragraph (a), but the sentence or level of offense is a misdemeanor disposition, the individual is disqualified but the disqualification lookback period for the offense is the period applicable to misdemeanors.

(e) When a disqualification is based on a judicial determination other than a conviction, the disqualification period begins from the date of the court order. When a

disqualification is based on an admission, the disqualification period begins from the date of an admission in court. When a disqualification is based on an Alford Plea, the disqualification period begins from the date the Alford Plea is entered in court. When a disqualification is based on a preponderance of evidence of a disqualifying act, the disqualification date begins from the date of the dismissal, the date of discharge of the sentence imposed for a conviction for a disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

Sec. 20. Minnesota Statutes 2008, section 245C.15, subdivision 4, is amended to read:

Subd. 4. **Seven-year disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) less than seven years has passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a misdemeanor-level violation of any of the following offenses: sections 256.98 (wrongfully obtaining assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide and injury); 609.221 (assault in the first degree); 609.222 (assault in the second degree); 609.223 (assault in the third degree); 609.2231 (assault in the fourth degree); 609.224 (assault in the fifth degree); 609.2242 (domestic assault); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult); 609.2672 (assault of an unborn child in the third degree); 609.27 (coercion); violation of an order for protection under 609.3232 (protective order authorized; procedures; penalties); 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored checks); 609.611 (insurance fraud); 609.66 (dangerous weapons); 609.665 (spring guns); 609.746 (interference with privacy); 609.79 (obscene or harassing telephone calls); 609.795 (letter, telegram, or package; opening; harassment); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23 (indecent exposure), not involving a minor; 617.293 (harmful materials; dissemination and display to minors prohibited); or violation of an order for protection under section 518B.01 (Domestic Abuse Act).

(b) An individual is disqualified under section 245C.14 if less than seven years has passed since a determination or disposition of the individual's:

(1) failure to make required reports under section 626.556, subdivision 3, or 626.557, subdivision 3, for incidents in which: (i) the final disposition under section 626.556 or 626.557 was substantiated maltreatment, and (ii) the maltreatment was recurring or serious; or

(2) substantiated serious or recurring maltreatment of a minor under section 626.556, a vulnerable adult under section 626.557, or serious or recurring maltreatment in any other state, the elements of which are substantially similar to the elements of maltreatment under section 626.556 or 626.557 for which: (i) there is a preponderance of evidence that the maltreatment occurred, and (ii) the subject was responsible for the maltreatment.

(c) An individual is disqualified under section 245C.14 if less than seven years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraphs (a) and (b), as each of these offenses is defined in Minnesota Statutes.

(d) An individual is disqualified under section 245C.14 if less than seven years has passed since the discharge of the sentence imposed for an offense in any other state or country, the elements of which are substantially similar to the elements of any of the offenses listed in paragraphs (a) and (b).

(e) When a disqualification is based on a judicial determination other than a conviction, the disqualification period begins from the date of the court order. When a disqualification is based on an admission, the disqualification period begins from the date of an admission in court. When a disqualification is based on an Alford Plea, the disqualification period begins from the date the Alford Plea is entered in court. When a disqualification is based on a preponderance of evidence of a disqualifying act, the disqualification date begins from the date of the dismissal, the date of discharge of the sentence imposed for a conviction for a disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

(f) An individual is disqualified under section 245C.14 if less than seven years has passed since the individual was disqualified under section 256.98, subdivision 8.

Sec. 21. Minnesota Statutes 2008, section 245C.22, subdivision 7, is amended to read:

Subd. 7. **Classification of certain data.** (a) Notwithstanding section 13.46, upon setting aside a disqualification under this section, the identity of the disqualified individual who received the set-aside and the individual's disqualifying characteristics are public data if the set-aside was:

(1) for any disqualifying characteristic under section 245C.15, when the set-aside relates to a child care center or a family child care provider licensed under chapter 245A; or

(2) for a disqualifying characteristic under section 245C.15, subdivision 2.

(b) Notwithstanding section 13.46, upon granting a variance to a license holder under section 245C.30, the identity of the disqualified individual who is the subject of

32.1 the variance, the individual's disqualifying characteristics under section 245C.15, and the
32.2 terms of the variance are public data, when the variance:

32.3 (1) is issued to a child care center or a family child care provider licensed under
32.4 chapter 245A; or

32.5 (2) relates to an individual with a disqualifying characteristic under section 245C.15,
32.6 subdivision 2.

32.7 (c) The identity of a disqualified individual and the reason for disqualification
32.8 remain private data when:

32.9 (1) a disqualification is not set aside and no variance is granted, except as provided
32.10 under section 13.46, subdivision 4;

32.11 (2) the data are not public under paragraph (a) or (b);

32.12 (3) the disqualification is rescinded because the information relied upon to disqualify
32.13 the individual is incorrect; or

32.14 (4) the disqualification relates to a license to provide relative child foster care.

32.15 As used in this clause, "relative" has the meaning given it under section 260C.007,
32.16 subdivision 27.

32.17 (d) Licensed family child care providers and child care centers must provide notices
32.18 as required under section 245C.301.

32.19 (e) Notwithstanding paragraphs (a) and (b), the identity of household members who
32.20 are the subject of a disqualification related set-aside or variance is not public data if:

32.21 (1) the household member resides in the residence where the family child care is
32.22 provided;

32.23 (2) the subject of the set-aside or variance is under the age of 18 years; and

32.24 (3) the set-aside or variance only relates to a disqualification under section 245C.15,
32.25 subdivision 4, for a misdemeanor-level theft crime as defined in section 609.52.

32.26 Sec. 22. Minnesota Statutes 2008, section 245C.24, subdivision 2, is amended to read:

32.27 Subd. 2. **Permanent bar to set aside a disqualification.** (a) Except as provided in
32.28 paragraph (b), the commissioner may not set aside the disqualification of any individual
32.29 disqualified pursuant to this chapter, regardless of how much time has passed, if the
32.30 individual was disqualified for a crime or conduct listed in section 245C.15, subdivision 1.

32.31 (b) For an individual in the chemical dependency or corrections field who was
32.32 disqualified for a crime or conduct listed under section 245C.15, subdivision 1, and whose
32.33 disqualification was set aside prior to July 1, 2005, the commissioner must consider
32.34 granting a variance pursuant to section 245C.30 for the license holder for a program
32.35 dealing primarily with adults. A request for reconsideration evaluated under this paragraph

must include a letter of recommendation from the license holder that was subject to the prior set-aside decision addressing the individual's quality of care to children or vulnerable adults and the circumstances of the individual's departure from that service.

(c) When a licensed foster care provider adopts an individual who had received foster care services from the provider for over six months, and the adopted individual is required to receive a background study under section 245C.03, subdivision 1, paragraph (a), clause (2) or (6), the commissioner may grant a variance to the license holder under section 245C.30 to permit the adopted individual with a permanent disqualification to remain affiliated with the license holder under the conditions of the variance when the variance is recommended by the county of responsibility for each of the remaining individuals in placement in the home and the licensing agency for the home.

Sec. 23. Minnesota Statutes 2008, section 245C.24, subdivision 3, is amended to read:

Subd. 3. **Ten-year bar to set aside disqualification.** (a) The commissioner may not set aside the disqualification of an individual in connection with a license to provide family child care for children, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home if: (1) less than ten years has passed since the discharge of the sentence imposed, if any, for the offense; or (2) when disqualified based on a preponderance of evidence determination under section 245C.14, subdivision 1, paragraph (a), clause (2), or an admission under section 245C.14, subdivision 1, paragraph (a), clause (1), and less than ten years has passed since the individual committed the act or admitted to committing the act, whichever is later; and (3) the individual has committed a violation of any of the following offenses: sections 609.165 (felon ineligible to possess firearm); criminal vehicular homicide or criminal vehicular operation causing death under 609.21 (criminal vehicular homicide and injury); 609.215 (aiding suicide or aiding attempted suicide); felony violations under 609.223 or 609.2231 (assault in the third or fourth degree); 609.229 (crimes committed for benefit of a gang); 609.713 (terroristic threats); 609.235 (use of drugs to injure or to facilitate crime); 609.24 (simple robbery); 609.255 (false imprisonment); 609.562 (arson in the second degree); 609.71 (riot); 609.498, subdivision 1 or 1b (aggravated first-degree or first-degree tampering with a witness); burglary in the first or second degree under 609.582 (burglary); 609.66 (dangerous weapon); 609.665 (spring guns); 609.67 (machine guns and short-barreled shotguns); 609.749, subdivision 2 (gross misdemeanor harassment; stalking); 152.021 or 152.022 (controlled substance crime in the first or second degree); 152.023, subdivision 1, clause (3) or (4) or subdivision 2, clause (4) (controlled substance crime in the third degree); 152.024, subdivision 1, clause (2), (3), or (4) (controlled

substance crime in the fourth degree); 609.224, subdivision 2, paragraph (c) (fifth-degree assault by a caregiver against a vulnerable adult); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse of a vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report); 609.265 (abduction); 609.2664 to 609.2665 (manslaughter of an unborn child in the first or second degree); 609.267 to 609.2672 (assault of an unborn child in the first, second, or third degree); 609.268 (injury or death of an unborn child in the commission of a crime); repeat offenses under 617.23 (indecent exposure); 617.293 (disseminating or displaying harmful material to minors); a felony-level conviction involving alcohol or drug use, a gross misdemeanor offense under 609.324, subdivision 1 (other prohibited acts); a gross misdemeanor offense under 609.378 (neglect or endangerment of a child); a gross misdemeanor offense under 609.377 (malicious punishment of a child); 609.72, subdivision 3 (disorderly conduct against a vulnerable adult); or 624.713 (certain persons not to possess firearms).

(b) The commissioner may not set aside the disqualification of an individual if less than ten years have passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraph (a) as each of these offenses is defined in Minnesota Statutes.

(c) The commissioner may not set aside the disqualification of an individual if less than ten years have passed since the discharge of the sentence imposed for an offense in any other state or country, the elements of which are substantially similar to the elements of any of the offenses listed in paragraph (a).

Sec. 24. Minnesota Statutes 2008, section 245C.25, is amended to read:

245C.25 CONSOLIDATED RECONSIDERATION OF MALTREATMENT DETERMINATION AND DISQUALIFICATION.

(a) If an individual is disqualified on the basis of a determination of maltreatment under section 626.556 or 626.557, which was serious or recurring, and the individual requests reconsideration of the maltreatment determination under section 626.556, subdivision 10i, or 626.557, subdivision 9d, and also requests reconsideration of the disqualification under section 245C.21, the commissioner shall consolidate the reconsideration of the maltreatment determination and the disqualification into a single reconsideration.

(b) For maltreatment and disqualification determinations made by county agencies, the county agency shall conduct the consolidated reconsideration. If the county agency has disqualified an individual on multiple bases, one of which is a county maltreatment

determination for which the individual has a right to request reconsideration, the county shall conduct the reconsideration of all disqualifications.

(c) If the county has previously conducted a consolidated reconsideration under paragraph (b) of a maltreatment determination and a disqualification based on serious or recurring maltreatment, and the county subsequently disqualifies the individual based on that determination, the county shall conduct the reconsideration of the subsequent disqualification. The scope of the subsequent disqualification shall be limited to whether the individual poses a risk of harm in accordance with section 245C.22, subdivision 4. If the commissioner subsequently disqualifies the individual in connection with a child foster care license based on the county's previous maltreatment determination, the commissioner shall conduct the reconsideration of the subsequent disqualification.

Sec. 25. Minnesota Statutes 2008, section 245C.27, subdivision 1, is amended to read:

Subdivision 1. Fair hearing when disqualification is not set aside. (a) If the commissioner does not set aside a disqualification of an individual under section 245C.22 who is disqualified on the basis of a preponderance of evidence that the individual committed an act or acts that meet the definition of any of the crimes listed in section 245C.15; for a determination under section 626.556 or 626.557 of substantiated maltreatment that was serious or recurring under section 245C.15; or for failure to make required reports under section 626.556, subdivision 3; or 626.557, subdivision 3, pursuant to section 245C.15, subdivision 4, paragraph (b), clause (1), the individual may request a fair hearing under section 256.045, unless the disqualification is deemed conclusive under section 245C.29.

(b) The fair hearing is the only administrative appeal of the final agency determination for purposes of appeal by the disqualified individual. The disqualified individual does not have the right to challenge the accuracy and completeness of data under section 13.04.

(c) Except as provided under paragraph (e), if the individual was disqualified based on a conviction ~~or of~~, admission to, or Alford Plea to any crimes listed in section 245C.15, subdivisions 1 to 4, or for a disqualification under section 256.98, subdivision 8, the reconsideration decision under section 245C.22 is the final agency determination for purposes of appeal by the disqualified individual and is not subject to a hearing under section 256.045. If the individual was disqualified based on a judicial determination, that determination is treated the same as a conviction for purposes of appeal.

(d) This subdivision does not apply to a public employee's appeal of a disqualification under section 245C.28, subdivision 3.

(e) Notwithstanding paragraph (c), if the commissioner does not set aside a disqualification of an individual who was disqualified based on both a preponderance of evidence and a conviction or admission, the individual may request a fair hearing under section 256.045, unless the disqualifications are deemed conclusive under section 245C.29. The scope of the hearing conducted under section 256.045 with regard to the disqualification based on a conviction or admission shall be limited solely to whether the individual poses a risk of harm, according to section 256.045, subdivision 3b. In this case, the reconsideration decision under section 245C.22 is not the final agency decision for purposes of appeal by the disqualified individual.

Sec. 26. Minnesota Statutes 2008, section 245C.301, is amended to read:

245C.301 NOTIFICATION OF SET-ASIDE OR VARIANCE.

(a) Except as provided under paragraphs (b) and (c), ~~if required by the commissioner, family child care providers and child care centers~~ must provide a written notification to parents considering enrollment of a child or parents of a child attending the family child care ~~or child care center~~ if the program employs or has living in the home any individual who is the subject of either a set-aside or variance.

(b) Notwithstanding paragraph (a), family child care license holders are not required to disclose that the program has an individual living in the home who is the subject of a set-aside or variance if:

(1) the household member resides in the residence where the family child care is provided;

(2) the subject of the set-aside or variance is under the age of 18 years; and

(3) the set-aside or variance relates to a disqualification under section 245C.15, subdivision 4, for a misdemeanor-level theft crime as defined in section 609.52.

(c) The notice specified in paragraph (a) is not required when the period of disqualification in section 245C.15, subdivisions 2 to 4, has been exceeded.

(d) Upon receipt of a notice from the commissioner that a disqualification has been set aside or a variance has been granted related to a current employee, child care centers must provide a written notification to parents of children attending the child care center with whom that employee may have contact. An investigation memorandum posted under section 245A.06, subdivision 8, or section 245A.07, subdivision 5, that reports the disqualification of the individual who is the subject of the notice under this paragraph is no longer required to be posted after the license holder provides the notice required under this paragraph.

Sec. 27. Minnesota Statutes 2008, section 256.045, subdivision 3, is amended to read:

Subd. 3. State agency hearings. (a) State agency hearings are available for the following:

(1) any person applying for, receiving or having received public assistance, medical care, or a program of social services granted by the state agency or a county agency or the federal Food Stamp Act whose application for assistance is denied, not acted upon with reasonable promptness, or whose assistance is suspended, reduced, terminated, or claimed to have been incorrectly paid;

(2) any patient or relative aggrieved by an order of the commissioner under section 252.27;

(3) a party aggrieved by a ruling of a prepaid health plan;

(4) except as provided under chapter 245C, any individual or facility determined by a lead agency to have maltreated a vulnerable adult under section 626.557 after they have exercised their right to administrative reconsideration under section 626.557;

(5) any person whose claim for foster care payment according to a placement of the child resulting from a child protection assessment under section 626.556 is denied or not acted upon with reasonable promptness, regardless of funding source;

(6) any person to whom a right of appeal according to this section is given by other provision of law;

(7) an applicant aggrieved by an adverse decision to an application for a hardship waiver under section 256B.15;

(8) an applicant aggrieved by an adverse decision to an application or redetermination for a Medicare Part D prescription drug subsidy under section 256B.04, subdivision 4a;

(9) except as provided under chapter 245A, an individual or facility determined to have maltreated a minor under section 626.556, after the individual or facility has exercised the right to administrative reconsideration under section 626.556; or

(10) except as provided under chapter 245C, an individual disqualified under sections 245C.14 and 245C.15, which has not been set aside under sections 245C.22 and 245C.23, on the basis of serious or recurring maltreatment; a preponderance of the evidence that the individual has committed an act or acts that meet the definition of any of the crimes listed in section 245C.15, subdivisions 1 to 4; or for failing to make reports required under section 626.556, subdivision 3, or 626.557, subdivision 3. Hearings regarding a maltreatment determination under clause (4) or (9) and a disqualification under this clause in which the basis for a disqualification is serious or recurring maltreatment, which has not been set aside under sections 245C.22 and 245C.23, shall be consolidated into a single fair hearing. In such cases, the scope of review by the human services referee

shall include both the maltreatment determination and the disqualification. The failure to exercise the right to an administrative reconsideration shall not be a bar to a hearing under this section if federal law provides an individual the right to a hearing to dispute a finding of maltreatment. Individuals and organizations specified in this section may contest the specified action, decision, or final disposition before the state agency by submitting a written request for a hearing to the state agency within 30 days after receiving written notice of the action, decision, or final disposition, or within 90 days of such written notice if the applicant, recipient, patient, or relative shows good cause why the request was not submitted within the 30-day time limit.

(b) The hearing for an individual or facility under paragraph (a), clause (4), (9), or (10), is the only administrative appeal to the final agency determination specifically, including a challenge to the accuracy and completeness of data under section 13.04. Hearings requested under paragraph (a), clause (4), apply only to incidents of maltreatment that occur on or after October 1, 1995. Hearings requested by nursing assistants in nursing homes alleged to have maltreated a resident prior to October 1, 1995, shall be held as a contested case proceeding under the provisions of chapter 14. Hearings requested under paragraph (a), clause (9), apply only to incidents of maltreatment that occur on or after July 1, 1997. A hearing for an individual or facility under paragraph (a), clause (9), is only available when there is no juvenile court or adult criminal action pending. If such action is filed in either court while an administrative review is pending, the administrative review must be suspended until the judicial actions are completed. If the juvenile court action or criminal charge is dismissed or the criminal action overturned, the matter may be considered in an administrative hearing.

(c) For purposes of this section, bargaining unit grievance procedures are not an administrative appeal.

(d) The scope of hearings involving claims to foster care payments under paragraph (a), clause (5), shall be limited to the issue of whether the county is legally responsible for a child's placement under court order or voluntary placement agreement and, if so, the correct amount of foster care payment to be made on the child's behalf and shall not include review of the propriety of the county's child protection determination or child placement decision.

(e) A vendor of medical care as defined in section 256B.02, subdivision 7, or a vendor under contract with a county agency to provide social services is not a party and may not request a hearing under this section, except if assisting a recipient as provided in subdivision 4.

(f) An applicant or recipient is not entitled to receive social services beyond the services prescribed under chapter 256M or other social services the person is eligible for under state law.

(g) The commissioner may summarily affirm the county or state agency's proposed action without a hearing when the sole issue is an automatic change due to a change in state or federal law.

Sec. 28. Minnesota Statutes 2008, section 256.045, subdivision 3b, is amended to read:

Subd. 3b. Standard of evidence for maltreatment and disqualification hearings.

(a) The state human services referee shall determine that maltreatment has occurred if a preponderance of evidence exists to support the final disposition under sections 626.556 and 626.557. For purposes of hearings regarding disqualification, the state human services referee shall affirm the proposed disqualification in an appeal under subdivision 3, paragraph (a), clause (9), if a preponderance of the evidence shows the individual has:

(1) committed maltreatment under section 626.556 or 626.557, which is serious or recurring;

(2) committed an act or acts meeting the definition of any of the crimes listed in section 245C.15, subdivisions 1 to 4; or

(3) failed to make required reports under section 626.556 or 626.557, for incidents in which the final disposition under section 626.556 or 626.557 was substantiated maltreatment that was serious or recurring.

(b) If the disqualification is affirmed, the state human services referee shall determine whether the individual poses a risk of harm in accordance with the requirements of section ~~245C.16~~ 245C.22, and whether the disqualification should be set aside or not set aside. In determining whether the disqualification should be set aside, the human services referee shall consider all of the characteristics that cause the individual to be disqualified, including those characteristics that were not subject to review under paragraph (a), in order to determine whether the individual poses a risk of harm. A decision to set aside a disqualification that is the subject of the hearing constitutes a determination that the individual does not pose a risk of harm and that the individual may provide direct contact services in the individual program specified in the set aside. If a determination that the information relied upon to disqualify an individual was correct and is conclusive under section 245C.29, and the individual is subsequently disqualified under section 245C.14, the individual has a right to again request reconsideration on the risk of harm under section 245C.21. Subsequent determinations regarding risk of harm are not subject to another hearing under this section.

(c) The state human services referee shall recommend an order to the commissioner of health, education, or human services, as applicable, who shall issue a final order. The commissioner shall affirm, reverse, or modify the final disposition. Any order of the commissioner issued in accordance with this subdivision is conclusive upon the parties unless appeal is taken in the manner provided in subdivision 7. In any licensing appeal under chapters 245A and 245C and sections 144.50 to 144.58 and 144A.02 to 144A.46, the commissioner's determination as to maltreatment is conclusive, as provided under section 245C.29.

Sec. 29. Minnesota Statutes 2008, section 626.556, subdivision 2, is amended to read:

Subd. 2. **Definitions.** As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child maltreatment, and family strengths and needs that is applied to a child maltreatment report that does not allege substantial child endangerment. Family assessment does not include a determination as to whether child maltreatment occurred but does determine the need for services to address the safety of family members and the risk of subsequent maltreatment.

(b) "Investigation" means fact gathering related to the current safety of a child and the risk of subsequent maltreatment that determines whether child maltreatment occurred and whether child protective services are needed. An investigation must be used when reports involve substantial child endangerment, and for reports of maltreatment in facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10; or in a nonlicensed personal care provider association as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(c) "Substantial child endangerment" means a person responsible for a child's care, and in the case of sexual abuse includes a person who has a significant relationship to the child as defined in section 609.341, or a person in a position of authority as defined in section 609.341, who by act or omission commits or attempts to commit an act against a child under their care that constitutes any of the following:

- (1) egregious harm as defined in section 260C.007, subdivision 14;
- (2) sexual abuse as defined in paragraph (d);
- (3) abandonment under section 260C.301, subdivision 2;

(4) neglect as defined in paragraph (f), clause (2), that substantially endangers the child's physical or mental health, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(5) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;

(6) manslaughter in the first or second degree under section 609.20 or 609.205;

(7) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;

(8) solicitation, inducement, and promotion of prostitution under section 609.322;

(9) criminal sexual conduct under sections 609.342 to 609.3451;

(10) solicitation of children to engage in sexual conduct under section 609.352;

(11) malicious punishment or neglect or endangerment of a child under section 609.377 or 609.378;

(12) use of a minor in sexual performance under section 617.246; or

(13) parental behavior, status, or condition which mandates that the county attorney file a termination of parental rights petition under section 260C.301, subdivision 3, paragraph (a).

(d) "Sexual abuse" means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes threatened sexual abuse.

(e) "Person responsible for the child's care" means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employees or agents, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching.

(f) "Neglect" means the commission or omission of any of the acts specified under clauses (1) to (9), other than by accidental means:

(1) failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;

(2) failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so, including a growth delay, which may be referred to as a failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(3) failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care;

(4) failure to ensure that the child is educated as defined in sections 120A.22 and 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

(5) nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child in lieu of medical care; except that a parent, guardian, or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report if a lack of medical care may cause serious danger to the child's health. This section does not impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care, a duty to provide that care;

(6) prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance;

(7) "medical neglect" as defined in section 260C.007, subdivision 6, clause (5);

(8) chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety; or

(9) emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not

within the normal range for the child's age and stage of development, with due regard to the child's culture.

(g) "Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 121A.67 or 245.825.

Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by section 121A.582. Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child:

- (1) throwing, kicking, burning, biting, or cutting a child;
- (2) striking a child with a closed fist;
- (3) shaking a child under age three;
- (4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age;
- (5) unreasonable interference with a child's breathing;
- (6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;
- (7) striking a child under age one on the face or head;
- (8) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances;
- (9) unreasonable physical confinement or restraint not permitted under section 609.379, including but not limited to tying, caging, or chaining; or
- (10) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under section 121A.58.

(h) "Report" means any report received by the local welfare agency, police department, county sheriff, or agency responsible for assessing or investigating maltreatment pursuant to this section.

(i) "Facility" means:

(1) a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B;

(2) a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or

(3) a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(j) "Operator" means an operator or agency as defined in section 245A.02.

(k) "Commissioner" means the commissioner of human services.

(l) "Practice of social services," for the purposes of subdivision 3, includes but is not limited to employee assistance counseling and the provision of guardian ad litem and parenting time expeditor services.

(m) "Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

(n) "Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury. Threatened injury includes, but is not limited to, exposing a child to a person responsible for the child's care, as defined in paragraph (e), clause (1), who has:

(1) subjected a child to, or failed to protect a child from, an overt act or condition that constitutes egregious harm, as defined in section 260C.007, subdivision 14, or a similar law of another jurisdiction;

(2) been found to be palpably unfit under section 260C.301, paragraph (b), clause (4), or a similar law of another jurisdiction;

(3) committed an act that has resulted in an involuntary termination of parental rights under section 260C.301, or a similar law of another jurisdiction; or

(4) committed an act that has resulted in the involuntary transfer of permanent legal and physical custody of a child to a relative under section 260C.201, subdivision 11, paragraph (d), clause (1), or a similar law of another jurisdiction.

(o) Persons who conduct assessments or investigations under this section shall take into account accepted child-rearing practices of the culture in which a child participates and accepted teacher discipline practices, which are not injurious to the child's health, welfare, and safety.

(p) "Accidental" means a sudden, not reasonably foreseeable, and unexpected occurrence or event which:

45.1 (1) is not likely to occur and could not have been prevented by exercise of due
45.2 care; and

45.3 (2) if occurring while a child is receiving services from a facility, happens when the
45.4 facility and the employee or person providing services in the facility are in compliance
45.5 with the laws and rules relevant to the occurrence of event.

45.6 Sec. 30. Minnesota Statutes 2008, section 626.556, subdivision 10e, is amended to
45.7 read:

45.8 Subd. 10e. **Determinations.** (a) The local welfare agency shall conclude the family
45.9 assessment or the investigation within 45 days of the receipt of a report. The conclusion of
45.10 the assessment or investigation may be extended to permit the completion of a criminal
45.11 investigation or the receipt of expert information requested within 45 days of the receipt
45.12 of the report.

45.13 (b) After conducting a family assessment, the local welfare agency shall determine
45.14 whether services are needed to address the safety of the child and other family members
45.15 and the risk of subsequent maltreatment.

45.16 (c) After conducting an investigation, the local welfare agency shall make two
45.17 determinations: first, whether maltreatment has occurred; and second, whether child
45.18 protective services are needed.

45.19 (d) If the commissioner of education conducts an assessment or investigation,
45.20 the commissioner shall determine whether maltreatment occurred and what corrective
45.21 or protective action was taken by the school facility. If a determination is made that
45.22 maltreatment has occurred, the commissioner shall report to the employer, the school
45.23 board, and any appropriate licensing entity the determination that maltreatment occurred
45.24 and what corrective or protective action was taken by the school facility. In all other cases,
45.25 the commissioner shall inform the school board or employer that a report was received,
45.26 the subject of the report, the date of the initial report, the category of maltreatment alleged
45.27 as defined in paragraph (f), the fact that maltreatment was not determined, and a summary
45.28 of the specific reasons for the determination.

45.29 (e) When maltreatment is determined in an investigation involving a facility,
45.30 the investigating agency shall also determine whether the facility or individual was
45.31 responsible, or whether both the facility and the individual were responsible for the
45.32 maltreatment using the mitigating factors in paragraph (i). Determinations under this
45.33 subdivision must be made based on a preponderance of the evidence and are private data
45.34 on individuals or nonpublic data as maintained by the commissioner of education.

(f) For the purposes of this subdivision, "maltreatment" means any of the following acts or omissions:

- (1) physical abuse as defined in subdivision 2, paragraph (g);
- (2) neglect as defined in subdivision 2, paragraph (f);
- (3) sexual abuse as defined in subdivision 2, paragraph (d);
- (4) mental injury as defined in subdivision 2, paragraph (m); or
- (5) maltreatment of a child in a facility as defined in subdivision 2, paragraph (i).

(g) For the purposes of this subdivision, a determination that child protective services are needed means that the local welfare agency has documented conditions during the assessment or investigation sufficient to cause a child protection worker, as defined in section 626.559, subdivision 1, to conclude that a child is at significant risk of maltreatment if protective intervention is not provided and that the individuals responsible for the child's care have not taken or are not likely to take actions to protect the child from maltreatment or risk of maltreatment.

(h) This subdivision does not mean that maltreatment has occurred solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, in lieu of medical care. However, if lack of medical care may result in serious danger to the child's health, the local welfare agency may ensure that necessary medical services are provided to the child.

(i) When determining whether the facility or individual is the responsible party, or whether both the facility and the individual are responsible for determined maltreatment in a facility, the investigating agency shall consider at least the following mitigating factors:

(1) whether the actions of the facility or the individual caregivers were according to, and followed the terms of, an erroneous physician order, prescription, individual care plan, or directive; however, this is not a mitigating factor when the facility or caregiver was responsible for the issuance of the erroneous order, prescription, individual care plan, or directive or knew or should have known of the errors and took no reasonable measures to correct the defect before administering care;

(2) comparative responsibility between the facility, other caregivers, and requirements placed upon an employee, including the facility's compliance with related regulatory standards and the adequacy of facility policies and procedures, facility training, an individual's participation in the training, the caregiver's supervision, and facility staffing levels and the scope of the individual employee's authority and discretion; and

(3) whether the facility or individual followed professional standards in exercising professional judgment.

(j) Notwithstanding paragraph (i), when maltreatment is determined to have been committed by an individual who is also the facility license holder, both the individual and the facility must be determined responsible for the maltreatment, and both the background study disqualification standards under section 245C.15, subdivision 4, and the licensing actions under sections 245A.06 or 245A.07 apply.

(k) Individual counties may implement more detailed definitions or criteria that indicate which allegations to investigate, as long as a county's policies are consistent with the definitions in the statutes and rules and are approved by the county board. Each local welfare agency shall periodically inform mandated reporters under subdivision 3 who work in the county of the definitions of maltreatment in the statutes and rules and any additional definitions or criteria that have been approved by the county board.

Sec. 31. Minnesota Statutes 2008, section 626.556, subdivision 10f, is amended to read:

Subd. 10f. **Notice of determinations.** Within ten working days of the conclusion of a family assessment, the local welfare agency shall notify the parent or guardian of the child of the need for services to address child safety concerns or significant risk of subsequent child maltreatment. The local welfare agency and the family may also jointly agree that family support and family preservation services are needed. Within ten working days of the conclusion of an investigation, the local welfare agency or agency responsible for assessing or investigating the report shall notify the parent or guardian of the child, the person determined to be maltreating the child, and if applicable, the director of the facility, of the determination and a summary of the specific reasons for the determination. When the investigation involves a child foster care setting that is monitored by a private licensing agency under section 245A.16, the local welfare agency responsible for assessing or investigating the report shall notify the private licensing agency of the determination and shall provide a summary of the specific reasons for the determination. The notice to the private licensing agency must include identifying private data, but not the identity of the reporter of maltreatment. The notice must also include a certification that the information collection procedures under subdivision 10, paragraphs (h), (i), and (j), were followed and a notice of the right of a data subject to obtain access to other private data on the subject collected, created, or maintained under this section. In addition, the notice shall include the length of time that the records will be kept under subdivision 11c. The investigating agency shall notify the parent or guardian of the child who is the subject of the report, and any person or facility determined to have maltreated a child, of their appeal or review rights under this section or section 256.022. The notice must also state that a finding of maltreatment may result in denial of a

license application or background study disqualification under chapter 245C related to employment or services that are licensed by the Department of Human Services under chapter 245A, the Department of Health under chapter 144 or 144A, the Department of Corrections under section 241.021, and from providing services related to an unlicensed personal care provider organization under chapter 256B.

Sec. 32. Minnesota Statutes 2008, section 626.557, subdivision 9c, is amended to read:

Subd. 9c. **Lead agency; notifications, dispositions, determinations.** (a) Upon request of the reporter, the lead agency shall notify the reporter that it has received the report, and provide information on the initial disposition of the report within five business days of receipt of the report, provided that the notification will not endanger the vulnerable adult or hamper the investigation.

(b) Upon conclusion of every investigation it conducts, the lead agency shall make a final disposition as defined in section 626.5572, subdivision 8.

(c) When determining whether the facility or individual is the responsible party for substantiated maltreatment or whether both the facility and the individual are responsible for substantiated maltreatment, the lead agency shall consider at least the following mitigating factors:

(1) whether the actions of the facility or the individual caregivers were in accordance with, and followed the terms of, an erroneous physician order, prescription, resident care plan, or directive. This is not a mitigating factor when the facility or caregiver is responsible for the issuance of the erroneous order, prescription, plan, or directive or knows or should have known of the errors and took no reasonable measures to correct the defect before administering care;

(2) the comparative responsibility between the facility, other caregivers, and requirements placed upon the employee, including but not limited to, the facility's compliance with related regulatory standards and factors such as the adequacy of facility policies and procedures, the adequacy of facility training, the adequacy of an individual's participation in the training, the adequacy of caregiver supervision, the adequacy of facility staffing levels, and a consideration of the scope of the individual employee's authority; and

(3) whether the facility or individual followed professional standards in exercising professional judgment.

(d) When substantiated maltreatment is determined to have been committed by an individual who is also the facility license holder, both the individual and the facility must be determined responsible for the maltreatment, and both the background study

49.1 disqualification standards under section 245C.15, subdivision 4, and the licensing actions
49.2 under section 245A.06 or 245A.06 apply.

49.3 (e) The lead agency shall complete its final disposition within 60 calendar days. If
49.4 the lead agency is unable to complete its final disposition within 60 calendar days, the lead
49.5 agency shall notify the following persons provided that the notification will not endanger
49.6 the vulnerable adult or hamper the investigation: (1) the vulnerable adult or the vulnerable
49.7 adult's legal guardian, when known, if the lead agency knows them to be aware of the
49.8 investigation; and (2) the facility, where applicable. The notice shall contain the reason for
49.9 the delay and the projected completion date. If the lead agency is unable to complete its
49.10 final disposition by a subsequent projected completion date, the lead agency shall again
49.11 notify the vulnerable adult or the vulnerable adult's legal guardian, when known if the lead
49.12 agency knows them to be aware of the investigation, and the facility, where applicable,
49.13 of the reason for the delay and the revised projected completion date provided that the
49.14 notification will not endanger the vulnerable adult or hamper the investigation. A lead
49.15 agency's inability to complete the final disposition within 60 calendar days or by any
49.16 projected completion date does not invalidate the final disposition.

49.17 ~~(e)~~ (f) Within ten calendar days of completing the final disposition, the lead agency
49.18 shall provide a copy of the public investigation memorandum under subdivision 12b,
49.19 paragraph (b), clause (1), when required to be completed under this section, to the
49.20 following persons: (1) the vulnerable adult, or the vulnerable adult's legal guardian, if
49.21 known unless the lead agency knows that the notification would endanger the well-being
49.22 of the vulnerable adult; (2) the reporter, if the reporter requested notification when making
49.23 the report, provided this notification would not endanger the well-being of the vulnerable
49.24 adult; (3) the alleged perpetrator, if known; (4) the facility; and (5) the ombudsman for
49.25 long-term care, or the ombudsman for mental health and developmental disabilities, as
49.26 appropriate.

49.27 ~~(f)~~ (g) The lead agency shall notify the vulnerable adult who is the subject of
49.28 the report or the vulnerable adult's legal guardian, if known, and any person or facility
49.29 determined to have maltreated a vulnerable adult, of their appeal or review rights under
49.30 this section or section 256.021.

49.31 ~~(g)~~ (h) The lead agency shall routinely provide investigation memoranda for
49.32 substantiated reports to the appropriate licensing boards. These reports must include
49.33 the names of substantiated perpetrators. The lead agency may not provide investigative
49.34 memoranda for inconclusive or false reports to the appropriate licensing boards unless the
49.35 lead agency's investigation gives reason to believe that there may have been a violation of
49.36 the applicable professional practice laws. If the investigation memorandum is provided

to a licensing board, the subject of the investigation memorandum shall be notified and receive a summary of the investigative findings.

~~(h)~~ (i) In order to avoid duplication, licensing boards shall consider the findings of the lead agency in their investigations if they choose to investigate. This does not preclude licensing boards from considering other information.

~~(i)~~ (j) The lead agency must provide to the commissioner of human services its final dispositions, including the names of all substantiated perpetrators. The commissioner of human services shall establish records to retain the names of substantiated perpetrators.

Sec. 33. Minnesota Statutes 2008, section 626.557, subdivision 12b, is amended to read:

Subd. 12b. **Data management.** (a) In performing any of the duties of this section as a lead agency, the county social service agency shall maintain appropriate records. Data collected by the county social service agency under this section are welfare data under section 13.46. Notwithstanding section 13.46, subdivision 1, paragraph (a), data under this paragraph that are inactive investigative data on an individual who is a vendor of services are private data on individuals, as defined in section 13.02. The identity of the reporter may only be disclosed as provided in paragraph (c).

Data maintained by the common entry point are confidential data on individuals or protected nonpublic data as defined in section 13.02. Notwithstanding section 138.163, the common entry point shall destroy data three calendar years after date of receipt.

(b) The commissioners of health and human services shall prepare an investigation memorandum for each report alleging maltreatment investigated under this section. County social service agencies must maintain private data on individuals but are not required to prepare an investigation memorandum. During an investigation by the commissioner of health or the commissioner of human services, data collected under this section are confidential data on individuals or protected nonpublic data as defined in section 13.02. Upon completion of the investigation, the data are classified as provided in clauses (1) to (3) and paragraph (c).

(1) The investigation memorandum must contain the following data, which are public:

- (i) the name of the facility investigated;
- (ii) a statement of the nature of the alleged maltreatment;
- (iii) pertinent information obtained from medical or other records reviewed;
- (iv) the identity of the investigator;
- (v) a summary of the investigation's findings;

- 51.1 (vi) statement of whether the report was found to be substantiated, inconclusive,
51.2 false, or that no determination will be made;
- 51.3 (vii) a statement of any action taken by the facility;
- 51.4 (viii) a statement of any action taken by the lead agency; and
- 51.5 (ix) when a lead agency's determination has substantiated maltreatment, a statement
51.6 of whether an individual, individuals, or a facility were responsible for the substantiated
51.7 maltreatment, if known.

51.8 The investigation memorandum must be written in a manner which protects the
51.9 identity of the reporter and of the vulnerable adult and may not contain the names or, to
51.10 the extent possible, data on individuals or private data listed in clause (2).

51.11 (2) Data on individuals collected and maintained in the investigation memorandum
51.12 are private data, including:

- 51.13 (i) the name of the vulnerable adult;
- 51.14 (ii) the identity of the individual alleged to be the perpetrator;
- 51.15 (iii) the identity of the individual substantiated as the perpetrator; and
- 51.16 (iv) the identity of all individuals interviewed as part of the investigation.

51.17 (3) Other data on individuals maintained as part of an investigation under this section
51.18 are private data on individuals upon completion of the investigation.

51.19 (c) After the assessment or investigation is completed, the name of the reporter
51.20 must be confidential. The subject of the report may compel disclosure of the name of the
51.21 reporter only with the consent of the reporter or upon a written finding by a court that
51.22 the report was false and there is evidence that the report was made in bad faith. This
51.23 subdivision does not alter disclosure responsibilities or obligations under the Rules of
51.24 Criminal Procedure, except that where the identity of the reporter is relevant to a criminal
51.25 prosecution, the district court shall do an in-camera review prior to determining whether
51.26 to order disclosure of the identity of the reporter.

51.27 (d) Notwithstanding section 138.163, data maintained under this section by the
51.28 commissioners of health and human services must be destroyed under the following
51.29 schedule:

- 51.30 (1) data from reports determined to be false, two years after the finding was made;
- 51.31 (2) data from reports determined to be inconclusive, four years after the finding
51.32 was made;
- 51.33 (3) data from reports determined to be substantiated, seven years after the finding
51.34 was made; and
- 51.35 (4) data from reports which were not investigated by a lead agency and for which
51.36 there is no final disposition, two years from the date of the report.

(e) The commissioners of health and human services shall each annually report to the legislature and the governor on the number and type of reports of alleged maltreatment involving licensed facilities reported under this section, the number of those requiring investigation under this section, and the resolution of those investigations. The report shall identify:

(1) whether and where backlogs of cases result in a failure to conform with statutory time frames;

(2) where adequate coverage requires additional appropriations and staffing; and

(3) any other trends that affect the safety of vulnerable adults.

(f) Each lead agency must have a record retention policy.

(g) Lead agencies, prosecuting authorities, and law enforcement agencies may exchange not public data, as defined in section 13.02, if the agency or authority requesting the data determines that the data are pertinent and necessary to the requesting agency in initiating, furthering, or completing an investigation under this section. Data collected under this section must be made available to prosecuting authorities and law enforcement officials, local county agencies, and licensing agencies investigating the alleged maltreatment under this section. The lead agency shall exchange not public data with the vulnerable adult maltreatment review panel established in section 256.021 if the data are pertinent and necessary for a review requested under that section. Upon completion of the review, not public data received by the review panel must be returned to the lead agency.

(h) Each lead agency shall keep records of the length of time it takes to complete its investigations.

(i) A lead agency may notify other affected parties and their authorized representative if the agency has reason to believe maltreatment has occurred and determines the information will safeguard the well-being of the affected parties or dispel widespread rumor or unrest in the affected facility.

(j) Under any notification provision of this section, where federal law specifically prohibits the disclosure of patient identifying information, a lead agency may not provide any notice unless the vulnerable adult has consented to disclosure in a manner which conforms to federal requirements.

Sec. 34. Minnesota Statutes 2008, section 626.5572, subdivision 13, is amended to read:

Subd. 13. **Lead agency.** "Lead agency" is the primary administrative agency responsible for investigating reports made under section 626.557.

(a) The Department of Health is the lead agency for the facilities which are licensed or are required to be licensed as hospitals, home care providers, nursing homes, residential care homes, ~~or~~ boarding care homes, or residential facilities that are also federally certified as intermediate care facilities that serve people with developmental disabilities.

(b) The Department of Human Services is the lead agency for the programs licensed or required to be licensed as adult day care, adult foster care, programs for people with developmental disabilities, mental health programs, or chemical health programs, ~~or personal care provider organizations.~~

(c) The county social service agency or its designee is the lead agency for all other reports.

Sec. 35. **REPEALER.**

Minnesota Statutes 2008, section 245C.10, subdivision 1, is repealed.

ARTICLE 3

DEPARTMENT OF HUMAN SERVICES LICENSING TECHNICAL

Section 1. Minnesota Statutes 2008, section 245C.03, subdivision 4, is amended to read:

Subd. 4. **Personnel agencies; educational programs; professional services agencies.** The commissioner also may conduct studies on individuals specified in subdivision 1, paragraph (a), clauses (3) and (4), when the studies are initiated by:

- (1) personnel pool agencies;
- (2) temporary personnel agencies;
- (3) educational programs that train individuals by providing direct contact services in licensed programs; and
- (4) professional services agencies that are not licensed and which contract with licensed programs to provide direct contact services or individuals who provide direct contact services.

Sec. 2. Minnesota Statutes 2008, section 245C.08, subdivision 1, is amended to read:

Subdivision 1. **Background studies conducted by commissioner of human services.** (a) For a background study conducted by the commissioner, the commissioner shall review:

- (1) information related to names of substantiated perpetrators of maltreatment of vulnerable adults that has been received by the commissioner as required under section 626.557, subdivision 9c, paragraph (i);

(2) the commissioner's records relating to the maltreatment of minors in licensed programs, and from findings of maltreatment of minors as indicated through the social service information system;

(3) information from juvenile courts as required in subdivision 4 for individuals listed in section 245C.03, subdivision 1, paragraph (a), clauses (2), (5), and (6);

(4) information from the Bureau of Criminal Apprehension;

(5) except as provided in clause (6), information from the national crime information system when the commissioner has reasonable cause as defined under section 245C.05, subdivision 5; and

(6) for a background study related to a child foster care application for licensure or adoptions, the commissioner shall also review:

(i) information from the child abuse and neglect registry for any state in which the background study subject has resided for the past five years; and

(ii) information from national crime information databases, when the background study object is 18 years of age or older.

(b) Notwithstanding expungement by a court, the commissioner may consider information obtained under paragraph (a), clauses (3) and (4), unless the commissioner received notice of the petition for expungement and the court order for expungement is directed specifically to the commissioner.

Sec. 3. Minnesota Statutes 2008, section 245C.08, subdivision 2, is amended to read:

Subd. 2. Background studies conducted by a county agency. (a) For a background study conducted by a county agency for adult foster care, family adult day services, and family child care services, the commissioner shall review:

(1) information from the county agency's record of substantiated maltreatment of adults and the maltreatment of minors;

(2) information from juvenile courts as required in subdivision 4 for individuals listed in section 245C.03, subdivision 1, paragraph (a), clauses (2), (5), and (6); and

(3) information from the Bureau of Criminal Apprehension.

(b) If the individual has resided in the county for less than five years, the study shall include the records specified under paragraph (a) for the previous county or counties of residence for the past five years.

(c) Notwithstanding expungement by a court, the county agency may consider information obtained under paragraph (a), clause (3), unless the commissioner received notice of the petition for expungement and the court order for expungement is directed specifically to the commissioner.

55.1 Sec. 4. Minnesota Statutes 2008, section 245C.08, subdivision 4, is amended to read:

55.2 Subd. 4. **Juvenile court records.** (a) The commissioner shall review records
55.3 from the juvenile courts for an individual studied under section 245C.03, subdivision 1,
55.4 paragraph (a), clauses (2) and (5).

55.5 (b) For individuals studied under section 245C.03, subdivision 1, paragraph (a),
55.6 clauses (1), (3), (4), and (6), and subdivision 2, who are ages 13 to 17, the commissioner
55.7 shall review records from the juvenile courts when the commissioner has reasonable cause.

55.8 (c) The juvenile courts shall help with the study by giving the commissioner
55.9 existing juvenile court records on individuals described in section 245C.03, subdivision 1,
55.10 paragraph (a), clauses (2), (5), and (6), relating to delinquency proceedings held within
55.11 either the five years immediately preceding the background study or the five years
55.12 immediately preceding the individual's 18th birthday, whichever time period is longer.

55.13 (d) For purposes of this chapter, a finding that a delinquency petition is proven in
55.14 juvenile court shall be considered a conviction in state district court.

55.15 (e) Juvenile courts shall provide orders of involuntary and voluntary termination of
55.16 parental rights under section 260C.301 to the commissioner upon request for purposes of
55.17 conducting a background study under this chapter.

55.18 Sec. 5. Minnesota Statutes 2008, section 245C.14, subdivision 2, is amended to read:

55.19 Subd. 2. **Disqualification from access.** (a) If an individual who is studied under
55.20 section 245C.03, subdivision 1, paragraph (a), clauses (2), (5), and (6), is disqualified from
55.21 direct contact under subdivision 1, the commissioner shall also disqualify the individual
55.22 from access to a person receiving services from the license holder.

55.23 (b) No individual who is disqualified following a background study under section
55.24 245C.03, subdivision 1, paragraph (a), clauses (2), (5), and (6), or as provided elsewhere
55.25 in statute who is disqualified as a result of this section, may be allowed access to persons
55.26 served by the program unless the commissioner has provided written notice under section
55.27 245C.17 stating that:

55.28 (1) the individual may remain in direct contact during the period in which the
55.29 individual may request reconsideration as provided in section 245C.21, subdivision 2;

55.30 (2) the commissioner has set aside the individual's disqualification for that
55.31 licensed program or entity identified in section 245C.03 as provided in section 245C.22,
55.32 subdivision 4; or

55.33 (3) the license holder has been granted a variance for the disqualified individual
55.34 under section 245C.30.

APPENDIX
Article locations in s1447-1

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ARTICLE 3	TECHNICAL	Page.Ln 53.13

APPENDIX
Repealed Minnesota Statutes: s1447-1

245C.10 BACKGROUND STUDY; FEES.

Subdivision 1. **Subject of background study.** No applicant, license holder, or individual who is the subject of a background study shall pay any fees required to conduct the study.